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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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CONTENTS.

	<i>Page.</i>
Bevington, E. L-----	68, 101
Blumberg, Samuel-----	33
Cain, Ben B-----	118, 121
Clink, D. K-----	51
Esch, Hon. John J-----	7
Kahn, Hon. Julius-----	1
McLaughlin, Hon. M. O-----	139
Murphy, Walter D-----	63
Poindexter, Hon. Miles-----	4
Pratt, W. L-----	105
Robinson, Bird M-----	115
Smith, Hon. Hoke-----	18
Thom, Alfred P-----	67



MILEAGE BOOKS.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, March 21, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. If the committee will please come to order, we will proceed with the consideration of Senate bill 848. The appearance here this morning of so many men, apparently interested in the subject, suggests to the committee the importance of determining, if possible, what institutions are represented here, and how many of them expect to be heard through a representation of one or more. It is very obvious that the committee in assigning this time for the consideration of the bill did not quite appreciate the fact that there would be so many people in evidence at the hearings, and for this reason we are a little bit in doubt as to what is before us.

Mr. HOKE SMITH. Mr. Chairman—I beg your pardon; I thought you had finished.

The CHAIRMAN. Not quite. The chairman has laid out a plan of procedure, quite in accord with the ordinary method in like circumstances, but in view of other work which the committee has in hand and the importance of it, both as to subject matter and the question of time involved, it would appear as if we ought to get some sort of suggestion as to what the scope of this representation really is and what it portends as to time consumption. The chairman, for the purpose of facilitating the work of the committee and to keep faith with some of those with whom he has made tentative arrangements before realizing the extent of the presence of those as represented here, will take the liberty of calling on two persons, one of whom, according to his own representations, will be delightfully brief, and the other one will take such time as he needs for the proper representation of his cause. The chairman had in mind first to call on Mr. Kahn, of California, a Member of the House of Representatives, who has been very active, with other Members on this committee and off of it, in respect of this subject. After Mr. Kahn, in order to facilitate the work of the witness, the Chair will call on Mr. Esch, the chairman of the legislative committee of the Interstate Commerce Commission. We will give way for the moment, please, to Mr. Kahn.

STATEMENT OF HON. JULIUS KAHN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA.

Mr. KAHN. Mr. Chairman and gentlemen of the committee, unfortunately I have a meeting this morning of the Committee on Military Affairs. We have meetings almost every day, but the matters before us are of exceeding importance and I will have to get away as soon as I can. The bill that is before you has the approval of practically every organization of traveling men in this country. I understand there are 26 various organizations in favor of this measure that are represented before you this morning. It is practically impossible to hear all of them to-day, but this is a very important matter. The whole country, the people who send men on the road all over this country, are vitally interested in this matter. They feel confident that you gentlemen will look into the details of the bills before you, that you will afford the travelers of the country the relief which they seek. We all know that when the traveling men of the country are given opportunities to visit their customers in every section the railroad business improves very quickly

and very materially. That is one of the things that we want in this country to-day. I do not desire to take up the time of this committee in speaking about the details. There are gentlemen connected with these organizations who will do that as you proceed. They will go into the very merits of this measure and to the very roots of the problems that are involved. There is nothing further at this time I would desire to say.

Mr. JOHNSON. I want to ask Mr. Kahn a question when he concludes.

Mr. KAHN. What is it?

Mr. JOHNSON. I want to ask you a question if you have finished your statement. Have you any suggestion to make to the committee with reference to the rates to be charged? All the traveling men I have heard from want the 2½-cent mileage book. As the bill stands to-day, if it passes, the committee as it is now, they will not get the 2½-cent mileage book. I am in favor of the 2½-cent mileage book and expect to vote for it, but as the bill is now it is left to the Interstate Commerce Commission to say whether it will be 2½ cents or 4½ cents or whatever they want. How does the gentleman stand on that?

Mr. KAHN. The bill which I introduced has the 2½-cent provision. In talking with the Members, generally, upon this subject, both of the House and of this committee, I find that there is a feeling that the exact rate to be charged ought to be discussed fully and frankly and freely so that some decision may be arrived at that will meet the Senate committee's desire, so that the bill can be put through in conference.

Mr. RAYBURN. Let me ask the gentleman a question: Do you believe in legislative rate making?

Mr. KAHN. I have always believed that it could be done and have thought that if at times the railroads should put the rates too high Congress, or a committee of Congress, would be justified in bringing about a proper rate. I think the committees of Congress—

Mr. RAYBURN (interposing). Congress several years ago delegated that power to the Interstate Commerce Commission.

Mr. KAHN. Yes. Well, there are quite a good many members of the Senate committee who still feel that it should be left to the Interstate Commerce Commission; but when the matter was taken up by these various organizations with the various railroads they seemed frankly disinclined to do anything on the proposition, and yet every one of these gentlemen, traveling as they do all over the country, realizing that the railroads have to go whether they have passengers or not, feel that no harm can be accomplished by fixing the rate at such a figure as will be fair to them and also fair to the traveling men of the country.

Mr. BARKLEY. There have been quite a number of bills introduced, and all of them are a little different. I introduced a bill providing that the rate for the mileage books should be 25 per cent less than the regular fare. Do you think that it would be better to leave this bill indefinite, as it is in the form in which it passed the Senate, or to fix some direction to the Interstate Commerce Commission that might lead them to believe that what Congress wanted and contemplated was a reduction in the rate charged for the mileage book.

Mr. KAHN. I will say frankly to Mr. Barkley that I have no express determination to force anything. If what I ask for can not be granted with respect to the rights of the railroad companies and their ability to meet those rates, I take it that this committee will dig into those very questions seriously and thoroughly, and they will agree finally upon a figure that the men will be satisfied with and that the railroads can approve.

Mr. BARKLEY. The difficulty I see is that if the bill is left like it is the Interstate Commerce Commission might decide that the present rates are fair and reasonable as the bill provides now and would order these books issued simply as a matter of convenience, and it would not result in any reduction or in any advantage to the traveling public, except that they would have 5,000 miles of railroad transportation in their pocket instead of having a one-way ticket.

Mr. KAHN. Of course, in speaking to me personally the gentlemen told me that they thought that 2½ cents a mile fare was a reasonable compensation, and having that in mind and with that in view I introduced a bill for a 2½ cents a mile compensation; but I want to say frankly to the committee that I hope you will thoroughly investigate this matter and bring out a bill that will be agreeable and satisfactory all around. I know it can be done.

Mr. DENISON. Then, Mr. Kahn, if you think this committee can and ought to say by legislation what would be a fair and reasonable rate to charge the

traveling men, do you think we ought to say what would be a fair and reasonable rate to charge the rest of the people?

Mr. KAHN. I think if the rest of the people all want this committee to make some fair and reasonable rates, of course that is a matter for the committee to determine.

Mr. DENISON. I know that, but I just wanted to get your view.

Mr. KAHN. But the traveling men, who do more real traveling on the railroads of the country, who go about all over the land continuously, know better than anyone else, so far as they are concerned, how they are affected and what the railroads, in their opinion, ought to ask.

Mr. DENISON. I know that, but they travel as a matter of business, Mr. Kahn.

Mr. KAHN. Yes.

Mr. DENISON. But the average man travels when it is necessary for him to travel.

Mr. KAHN. That is very true.

Mr. DENISON. To or from his home or to some other place; and do you not think it is just about as important that we fix a rate for those who have to travel or desire to do so for pleasure, as it is for us to fix a rate for those who travel as a matter of business?

Mr. KAHN. I do not think it is as necessary, because the man who only travels occasionally for pleasure is only an occasional customer of a railroad company. These men are customers all the year around; do business with the railroads from one year's end to the other; have to go for the sake of their business and their business interests to every section of the Union.

Mr. DENISON. Of course, in the end the public pays for it anyway, you know.

Mr. KAHN. I imagine that is so.

Mr. DENISON. Yes.

Mr. KAHN. The public generally pays for almost everything.

Mr. SWEET. Mr. Kahn, do you approve of the Senate bill as it passed the Senate?

Mr. KAHN. The Senate bill?

Mr. SWEET. Yes; as it passed the Senate.

Mr. KAHN. Well, I will say frankly to my friend that I favor a 2½-cent-a-mile rate. That was cut out of the Senate bill and, of course, I have every confidence in this committee, and I know that the committee in the end will agree upon a measure that will be satisfactory to these gentlemen and also to the railroads.

Mr. SWEET. You believe, then, that the fixing of a reasonable rate can be left to the Interstate Commerce Commission?

Mr. KAHN. Well, I did not say that. I said that it can be left to this committee to determine, and whatever the committee does I feel satisfied will be satisfactory to the traveling men of the country and also, in the end, to the railroads as well. Because, whether these men travel or whether they do not on these railroads, the railroad train has to go on schedule time. Whether they have two or four or five or a dozen more passengers or not is a matter of indifference, seeming indifference, to the railroad company, but it is very important that these men be allowed to go out from the houses which they represent in order to build up the business of the country wherever they can; and that is another serious matter involved in this question. The business of the country, we all know, is none too good, and yet, when these men go out with their goods to see their customers and can roll in orders to their home houses, they are doing a great deal of positive good for the country. Because every order they send in helps the trade of the country, and these men ought to be given every opportunity that can be given to get out among our people and get as many orders as they can.

Mr. BURROUGHS. Mr. Kahn, you are a friend of this legislation?

Mr. KAHN. Yes.

Mr. BURROUGHS. And I, for one, and I am sure all the other members of the committee, would like your own views as to the legislation. Of course, if the Senate bill, which has already passed the Senate, should be accepted by the committee and passed by the House, that would end the matter.

Mr. KAHN. Yes.

Mr. BURROUGHS. And legislation in that form, as I understand it, would leave the fixing of the rates with the Interstate Commerce Commission.

Mr. KAHN. Yes.

Mr. BURROUGHS. Your bill is somewhat different and I would like your own personal view as to whether you would think it better, from the standpoint

of the legislation and being a friend of the legislation, for the committee to accept the Senate bill and end the matter there or, by adopting an amendment, necessitate the bill going to conference.

Mr. KAHN. Frankly I have not been able to discuss the matter with all of my friends among the travelers. I have been able to discuss it with one of my friends, and he is inclined to believe that the Senate provision would straighten out the matter. I would like to consult with my friends generally about this matter in order to find out exactly how they feel about it; because, after all, as I said a moment ago, there are no people in this whole country who are similarly interested in the bill as this delegation, because that is their business, that is their life work. They go out on the road all the time.

Mr. HOKE SMITH. Mr. Chairman, will Mr. Kahn allow me to say to him—

Mr. KAHN (interposing). Yes.

Mr. HOKE SMITH (continuing). That the National Council of Traveling Salesmen's Associations, I understand, have determined to ask the committee to approve the Senate bill.

Mr. KAHN. Well, there is one organization.

The CHAIRMAN. They will be given a hearing at an appropriate time and in an orderly manner.

Mr. HOKE SMITH. The council represents the entire body, as I understand it.

Mr. KAHN. Now, I was about to say that they have more interest in the legislation than any other class of business in this country except, possibly, the railroads themselves. They have to travel constantly; that is their business. I often feel sorry for them. I used to be a traveling man myself and used to be out on the road about 10 months of the year. Thank God, I have gotten away from that, and I hope that you gentlemen can all get out of it too, eventually; but the fact is they are in the business now. They want to be helped in this matter, and I feel confident that the country will be materially benefited if you can meet the wishes of these men who only want something that is right. I am quite sure, knowing the committee as I do, that you will be glad to hear from them and kindly take their wishes into consideration when you finally formulate a bill.

I thank you very much.

The CHAIRMAN. We are obliged to you, sir. The Chair omitted to state an arrangement he made with Senator Poindexter, who is here, to go on after Mr. Kahn. We will now afford him an opportunity to address the committee.

STATEMENT OF HON. MILES POINDEXTER, A SENATOR FROM THE STATE OF WASHINGTON.

Senator POINDEXTER. Mr. Chairman and gentlemen of the committee, I appreciate the privilege of appearing here and saying just a word to indicate my interest in your favorable action upon this bill.

The question which has been asked by several members of the committee as to whether or not the rate should be fixed in the bill or whether that should be left to the Interstate Commerce Commission I may say, and perhaps you are all familiar with the fact, was discussed very thoroughly on the passage of the bill in the Senate; and the conclusion of the Senate after hearing that discussion and after a meeting of rival views was embodied in the bill as it comes to you; and, personally, I am in favor of that bill as it stands, leaving to the Interstate Commerce Commission, subject to the general directions included in the bill and such hearings as the traveling men and the railroads and others interested may desire, to fix the rate.

This principle of a wholesale rate or a wholesale price for transportation is in harmony with the common practices of trade and commerce. I feel that the enactment of this bill and the fixing of a reasonable wholesale rate for mileage tickets by the Interstate Commerce Commission would result in the prompt sale of a large number of these tickets and the realizing of a very considerable sum of money by the railroads almost immediately, which, in my opinion, at this particular juncture in transportation problems, would be of very great benefit to the railroads and to the country.

The only other thing I desire to say is that I believe the carrying out of the purposes of this bill by its enactment and by proper action by the Interstate Commerce Commission would give a great impetus to business. I do not mean to say that it would have any revolutionary effect or immediately change conditions, but I think that it would encourage travel and increase business and consequently contribute in that way, to a material extent, to what now is the

chief problem before the country, and that is a restoration of industrial and commercial activity.

I thank the committee.

The CHAIRMAN. Senator, if you please, Mr. Barkley would like to ask you a question.

Mr. BARKLEY. Just one question, Senator. I received a letter from somebody representing the short-line railroads, claiming that prior to the war, when these mileage books were issued generally, they were not issued by the little short-line railroads, and complaining that the bill as written would include them. Do you think it would be wise for Congress to attempt to deal with that subject or leave it to the Interstate Commerce Commission to work out?

Senator POINDEXTER. Well, I think it should be left with the Interstate Commerce Commission, subject to the general provisions in the bill. There is some provision in the bill imposing a penalty, I think, against railroads under certain conditions for refusing to accept such mileage books.

Mr. BARKLEY. The language of the bill, as it now stands, directs the commission to provide general interchangeable mileage books on the railroads of the United States, subject to the act to regulate commerce. Would the commission have any discretion in exempting any kinds of railroads from the operation of this law as it is written?

Senator POINDEXTER. I do not remember the exact language of the bill in that respect. What section of the bill do you refer to? "Each carrier by rail, subject to this act"—

Now, what is the question?

Mr. BARKLEY. The question is whether there is any merit in the contention of the small, short-line roads, that they ought not to be required to do now what they never have done before—that is, issue these interchangeable mileage books—and whether we should exempt them or deal with it at all or leave it to the commission or provide that the commission may exempt them if they see fit.

Senator POINDEXTER. I think it should be left to the commission, just as other regulations of every road subject to the act to regulate commerce.

Mr. BARKLEY. Leaving it discretionary with the commission as to whether it should apply to all these roads would require an amendment, because the way it is written now the bill directs the commission to apply it to all of them that are subject to the act to regulate commerce.

Mr. NEWTON. Your point is that according to the way the bill is drawn it would have to apply to all if it applied to one, and that it possibly ought to be modified.

Mr. BARKLEY. I am not saying it ought to be modified, but that is a question that may arise and one that we may have to deal with.

Mr. SWEET. Senator, you approve of the Senate bill as it passed the Senate?

Senator POINDEXTER. Yes.

Mr. SWEET. The bill was amended on the floor of the Senate, was it not, so that the rates were to be fixed by the Interstate Commerce Commission instead of being fixed by the terms of the bill?

Senator POINDEXTER. That is my recollection.

The CHAIRMAN. Are there any further questions?

Senator POINDEXTER. I will say in further answer to Mr. Barkley that I favor the bill, in that respect, as it was passed. I think probably you are correct in saying that so far as the issuance of the tickets is concerned the commission is required by the bill to require the short lines or every line subject to the act to issue such tickets, but subject to such regulations as the commission may make. There is a further provision in the bill authorizing the commission, in its discretion, to make certain regulations.

Mr. BARKLEY. Do you think that under that language the commission could require some roads to issue these mileage books at the regular passenger rates and other roads to issue them at a lower rate?

Senator POINDEXTER. The language is, "Before making any order requiring the issuance of any such tickets the commission shall make and publish such reasonable rules and regulations for their issuance and use as in its judgment the public interest demands."

Mr. BARKLEY. That is a very general provision.

Senator POINDEXTER. I do not think that would authorize the commission to exempt a road from issuing the tickets, and I could not say to what extent it might apply in authorizing them to make certain regulations as to the conditions under which they should be issued by different classes of roads. It might be they could make regulations affecting different classes of roads within their discretion and subject to the requirement that the tickets must be issued.

Mr. GRAHAM. Mr. Chairman, may I ask a question right there, which occurs to me? I notice this language here in line 12, page 1 of the bill, that they shall issue mileage tickets "at a just and reasonable rate per mile, good for interstate passenger carriers." Would that have any particular significance? Would an interchangeable mileage ticket issued under this act, if it became a law, be good for strictly intrastate business also, or would it not?

Senator POINDEXTER. Well, that raises, I think, a rather difficult question as to what would be considered interstate transportation and what would be considered intrastate transportation, and it would be impossible to describe all of the different instances in which this distinction might occur.

Mr. GRAHAM. Suppose, for instance, in my State—I live in the western part of the State—and suppose I should present an interchangeable mileage ticket to the conductor for a trip from Chicago to Rock Island, in my district, under this bill would he have any right to reject such a ticket on the ground that it was not interstate passenger traffic? In other words, why put that language in the bill? If we can compel the issuance of interchangeable mileage books, why not say "interchangeable mileage books" and not say "good for interstate traffic"?

Senator POINDEXTER. I think it was put in the bill in order to avoid any question as to its constitutionality, leaving to the Interstate Commerce Commission, and, ultimately, to the courts, the decision in case dispute should arise as to what was interstate and what was State traffic, and consequently not subject to regulation by Congress. Congress has gone a long ways in the transportation act of 1920 in consolidating the regulation of commerce and considering all agencies of interstate commerce as subject to regulation by Congress. In the Wisconsin Rate Case that was applied to the fixing of State rates by State commissions, on account of its relation and its effect upon the income of the railroads as a whole as agencies of interstate commerce, and a somewhat similar question would arise under this.

Mr. GRAHAM. Of course, Senator, if this only means interstate traffic and these tickets would only be good for interstate traffic, a great deal of the good that is hoped for from this measure would be lost.

Senator POINDEXTER. Well, it undoubtedly would, if a narrow or a strict construction of what is interstate commerce, and subject to the act, should be given to the act.

Mr. BARKLEY. Suppose in issuing the ticket the railroad should print on it, "This ticket is good only for interstate traffic," would they have a right to put that on a ticket under this language?

Senator POINDEXTER. Well, that would be a matter subject to regulation by the Interstate Commerce Commission, I should say, offhand.

Mr. BARKLEY. It might not be, because the Interstate Commerce Commission can not change the meaning of the language of this law.

Senator POINDEXTER. No.

Mr. BARKLEY. And this language says that these tickets shall be good for interstate traffic.

Senator POINDEXTER. As to whether it should be printed on the ticket or not, I think that might come within the power of the commission to make regulations for the issuance of the tickets.

Mr. JOHNSON. Senator, I take it you are familiar with the bill as it passed the Senate, because I noticed you took part in the discussion, and you are also familiar with the Cummins-Esch bill. Will you please tell the committee what power is given to the Interstate Commerce Commission by the Senate bill that is not vested in them by the transportation act?

Senator POINDEXTER. I do not think any—

Mr. JOHNSON (interposing). That is just exactly what I am talking about. This bill does not mean anything.

Senator POINDEXTER. I think I can point out to you, if you will pardon me, what is does mean in that particular. It may be true and I may agree with you that it does not increase the power—

Mr. JOHNSON (interposing). That is exactly what I had in mind.

Senator POINDEXTER (continuing). Of the Interstate Commerce Commission, but the point about the bill is that it directs the Interstate Commerce Commission to exercise that power in this particular. That is the essential feature of the bill.

Mr. JOHNSON. Is not the law as written, laying down duties of the commission, or of a governmental body, directory? Or are not all laws directory, so far as performing the duties are concerned?

Senator POINDEXTER. Not directory in every respect. The interstate commerce act and the transportation act that you refer to contain some mandatory provisions and some directory provisions.

Mr. JOHNSON. There is nothing mandatory in this bill.

Senator POINDEXTER. It is intended to be. It is intended to be mandatory. It uses the word "direct," but it is intended to be mandatory.

Mr. JOHNSON. But if you leave it to the commission to construe those words, do you suppose they are going to construe anything to be mandatory on them unless you say it is mandatory, judging the future by the past?

Senator POINDEXTER. May I ask you a question?

Mr. JOHNSON. I yield for that purpose.

Senator POINDEXTER. What words would you use to make it more mandatory than the words that are used?

Mr. JOHNSON. Well, I would adopt the bill as first presented, fixing the rates per mile.

Senator POINDEXTER. But on this point of its mandatory or directory effect, what word would you use that would be more compelling than the word "direct?"

Mr. JOHNSON. Well, Senator, to be frank with you, as I have tried to be in all things and not pass the buck and deceive anybody, I do not think it will amount to anything either way unless this Congress writes the law and tells the Interstate Commerce Commission to enforce it, and if you leave it to their discretion, I do not think it will amount to anything. There is no use trying to fool anybody about it.

Senator POINDEXTER. I do not think any discretion would be left to the commission as to the question of issuing the tickets.

Mr. COOPER. Senator, if I read this bill right, it directs the Interstate Commerce Commission to issue these mileage books.

Senator POINDEXTER. That is the purpose of it and that is the intention of it, as I understand it.

Mr. COOPER. It is directed to require the railroads, I should have said, to issue these mileage books.

Senator POINDEXTER. Yes; that is what I meant in my answer to your question. It is the intention to make it mandatory upon them to require that these tickets shall be issued.

Mr. NEWTON. Senator, you come from one of the larger States, in area, and in the large amount of traveling I did on the road some years ago it was an exceptional thing when we crossed a State line. For instance, in Minnesota, the two Dakotas, Montana, Washington, and Oregon it is the exceptional thing for the average commercial traveler to cross a State line. A traveler going from Fargo to Minot is traveling a great distance and there are many stops in between, and it would seem to me from a reading of the Senate bill that that word "interstate" would prevent the ordinary traveler, who makes an ordinary run for an ordinary commercial house, from getting the benefit of the interchangeable mileage book with whatever reduction the Interstate Commerce Commission would authorize. I think the great bulk of the business would be outside of the benefits of this act the way the act is now drawn.

Senator POINDEXTER. Of course, the idea I have in mind of a commercial traveler using one of these tickets is that he would start out from a point in one State and perhaps stop at another point in the same State, and then go from that point into another State, and so on. Many of his trips might be entirely within the State, but in the entire journey that he was making, in going the rounds of his customers, he would pass through a number of different States and you could not separate the short stops from the entire trip, and the entire trip would characterize the nature of the transportation and that would be the theory upon which he would obtain it. If the bill does not say that, I think it ought to be amended so as to make it perfectly clear.

Mr. NEWTON. It seems to me that it does not say that, but in any event, it seems to me that certainly it is not clear that it would have the effect that you suggest.

Senator POINDEXTER. I think it ought to be made clear, if it is not clear.

I thank you.

STATEMENT OF HON. JOHN J. ESCH, MEMBER OF THE INTERSTATE COMMERCE COMMISSION.

Mr. ESCH. Mr. Chairman and gentlemen of the committee, I assure you that I appreciate the kind words you have seen fit to express. It was with keen regret

that I left the committee, but it is some satisfaction to know that it is possible for me to return, although in a different capacity. No one knows my limitations better than I do, and no one expresses his opinions with greater humility than I do. I thought I knew a little of transportation while I was on the committee, but I have been going to school with great advantage ever since I left.

The commission was requested to express its views on Senate bill 848 as passed by the Senate. I wish to state at the outset that the commission is not a unit with reference to this legislation. There are some of the members who feel that if it is possible to do it in a constitutional way the carriers should issue interchangeable mileage tickets. The commission objected, in a report made to the Senate committee, on the Senate committee's request, to the Watson bill, relating to interchangeable mileage tickets and providing that the charges therefor should be, as I recall it, 33½ per cent lower than the current charge.

One reason assigned by the commission in justification of its objection to the bill was, as suggested by Congressman Rayburn, that it implied making rates by legislation. As the Congress has delegated that function to the commission, the commission felt that Congress might not depart from the long course of 35 years and declare the rates. The bill as it passed the Senate, however, has omitted the fixing of the rates for the interchangeable mileage tickets.

The bill now before us directs the commission to require, after notice and hearing, each carrier by rail subject to this act to issue at such offices as may be prescribed by the commission joint interchangeable mileage tickets at a just and reasonable rate per mile, good for interstate passenger carriage upon the passenger trains of any and all other carriers by rail subject to this act.

The commission has given very careful consideration to the language of the pending bill. We submitted it to our division of law for opinion with reference to the legal and the constitutional aspects thereof. The conclusion of our division of law and of a majority of the commission is that the bill now before us is unconstitutional.

We come to that conclusion as a result of a consideration of the decision of the Supreme Court of the United States in what is known as the Lake Shore Case, the Lake Shore Railroad *v.* Smith, reported in 173 U. S. page 684. This case arose out of this state of facts: The State of Michigan had passed a law prescribing a 3-cent passenger fare, maximum. Subsequently the Legislature of Michigan passed a law providing for the sale of mileage tickets of 1,000 miles at the rate of 2½ cents per mile for the upper peninsula and 2 cents per mile for the lower peninsula; in other words, \$25 for a thousand-mile ticket in the upper peninsula and \$20 for a thousand-mile ticket in the lower peninsula. The tickets were good to the purchaser and members of his family, and were usable for a period of two years to be redeemable thereafter. Smith applied to the Lake Shore road at the station at Adrian, Mich., for a thousand-mile ticket, tendering but \$20. The agent refused to sell. Mandamus proceedings were brought. The case reached the Supreme Court of Michigan. That court sustained the State statute. A writ of error was issued to the Supreme Court of the United States, and the decision was handed down, I think, in 1898 or 1899 and appears, as I have stated, in 173 U. S. 684.

The Supreme Court of the United States in deciding it used this language at page 698:

"In this case there is not an exercise of the power to fix maximum rates. There is not the exercise of the acknowledged power to legislate so as to prevent extortion or unreasonable or illegal exactions. The fixing of the maximum rate does that. It is a pure, bald, and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time. It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who in the legislative judgment should be carried at a less expense than the other members of the community. There is no reasonable ground upon which the legislation can be rested unless the simple decision of the legislature should be held to constitute such reason."

Now, while the fourteenth amendment to the Constitution may not be applicable to the Federal Government—that is, may not be an inhibition upon the Federal Government to pass laws which take property without due process or deny to any person the equal protection of the law—nevertheless the fifth amendment is an inhibition upon the Federal Government, and is to the Federal Government what the fourteenth amendment is to the States. That was declared in the case of *Twining v. New Jersey* (211 U. S. 78).

Mr. GRAHAM. What page?

Mr. ESCH. Twining *v.* New Jersey (211 U. S. 78).

Now, this decision in the Michigan case has been approved in subsequent decisions of the United States Supreme Court and the Federal courts and has also been approved in State courts and has been approved in decisions of the Interstate Commerce Commission.

However, it is but fair to state that in some of the decisions of the Federal courts, following the Michigan case, the court held that the Michigan case must be confined to the facts therein stated and must not be enlarged. There are many citations which could be given, and I might cite two or three for the benefit of those desiring to investigate the subject matter further: Wisconsin, etc., Railroad Co. *v.* Jacobson (179 U. S. 287); Louisville & Nashville Railroad Co. *v.* Kentucky (183 U. S. 503).

In 1917 there was another case which came up in the Supreme Court of the United States, known as the Pennsylvania Railroad Co. *v.* Towers (245 U. S. 6), which some have claimed overruled the Michigan case.

The Towers case was a case arising in Maryland, where the railroad entering the city of Baltimore had put in commutation fares, and after they had been put in and had been in use for some time the railroad company sought and did file with the State commission of Maryland, a revised schedule increasing those commutation fares. The Public Utilities Commission of the State of Maryland resisted the increases in these commutation fares made by the railroad company. The case went to the Supreme Court of Maryland, and the Maryland Supreme Court sustained the finding of the Public Utilities Commission of Maryland. That case, too, came to the Supreme Court on writ of error, and the Supreme Court of the United States sustained the decision of the Supreme Court of Maryland, differentiating, however, the Towers case of Maryland from the Michigan case. The court made this distinction between the two cases:

"The Lake Shore case (which is the Michigan case) did not involve, as does the present one, the power of a State commission to fix intrastate rates for commutation tickets where such rates had already been put in force by the railroad company of its own volition, and we confine ourselves to the precise question presented in this case, which involves the supervision of commutation rates when rates of that character have been voluntarily established by the carrier. The rates here involved are wholly intrastate. The power of the States to fix reasonable intrastate rates is too well settled at this time to need further discussion or a citation of authority to support it."

In the case of People ex rel. New York, New Haven & Hartford Railroad Co. *v.* Public Service Commission (159 Appellate Division, New York Supreme Court, 531), and in the Commutation Rate case, decided by the Interstate Commerce Commission in 21 I. C. C. 428, both of those cases distinguish commutation tickets from mileage tickets.

In the New York case, it was held that, although it was unconstitutional and had been so held in New York, to require a carrier to issue mileage tickets at less than the standard rates—this was not true of commutation tickets because the service under commutation tickets was different from that under regular tickets sold at standard fares. The New York court cited and distinguished the Lake Shore case, which is the Michigan case, and the holding of this commission—that is, the Interstate Commerce Commission—in the Commutation Rate case was identical with the holding in the New York case, and in the Commutation Rate case, also, the Lake Shore case was distinguished.

The Supreme Court in the Towers case—the Maryland case—referring to these cases, stated:

"The reasoning of this decision is sound and involves no violation of the Federal Constitution."

The point is that the court distinguished between the commutation rate involved in the Maryland case and the mileage ticket rates involved in the Michigan case, citing these facts: In commutation rates there are, as a rule, two fixed termini, the point of residence of the commuter and his destination or place of business; second, the regularity of the traffic in connection with commutation business; third, the absence of anything in the nature of baggage for the average commuter; fourth, that commutation rates originated with the carriers themselves and for a purpose, namely, development of territory remote from the industrial center or place of business of the people; that the commutation rates had a social function to perform in lessening the congestion of the

great centers. For these reasons, the commutation fares were differentiated from mileage-ticket fares in these two cases.

That being the differentiation, it is our view that the Towers case—the Maryland case—did not overrule the Michigan case, but that the Supreme Court would, we believe, hold to-day that our action in ordering in lower rates on mileage tickets would be as unconstitutional as the action of the Michigan Legislature in requiring carriers to sell mileage tickets of 1,000 miles for \$20 for the lower peninsula and \$25 for the upper peninsula.

In the last paragraph of the Towers case, the Supreme Court uses this language:

"True it is that it may not be possible to reconcile these views with all that is said in the opinion delivered for the majority of the court in the case of Lake Shore & Michigan Southern Railway Company *v.* Smith, *supra*. The views therein expressed, which are inconsistent with the right of the States to fix reasonable commutation fares when the carrier has itself established fares for such service, must be regarded as overruled by the decision in this case."

So you will note that in the Towers case a distinction is made because of the different character of the service rendered under the commutation ticket as compared with the service rendered under the mileage ticket.

The Supreme Court, in our opinion, would sustain the opinion it has expressed in the Michigan case should a case be brought up under the bill now before us, should it be enacted into law.

The question as to the policy of the bill is one for Congress to determine. The Interstate Commerce Commission has no suggestions on matters of policy. Its purpose would be to enforce and administer any law which Congress sees fit to enact, leaving the interpretation of the act to the courts.

There are some other matters in the bill in its present form which I feel I ought to bring to your attention. You will notice—

Mr. RAYBURN (interposing). Mr. Esch, you will pardon me, you are speaking now of Senate bill 848.

Mr. ESCH. Yes; the bill you have before you and the bill which was sent to us, and as to which our views were requested; we were invited to personally appear with reference to this bill and this bill only.

The bill as written directs us to require—

Mr. MAPES. May I ask you a question? Was that before the amendment in the Senate?

Mr. ESCH. No; this is the amended Senate bill. This is the substitute for the so-called Watson bill. The Watson bill, as I stated before, prescribed a definite reduction from the standard rate.

Mr. MAPES. And the bill was sent to you after it came to our committee.

Mr. ESCH. Oh, yes. This is the bill I am discussing now. Section 2, as it is to be amended, directs the commission "to require, after notice and hearing, each carrier by rail subject to this act to issue," etc., the interchangeable mileage ticket. Does not that destroy the privity of contract? Does it not destroy contractual relationships, if, for instance, the commission orders the Baltimore & Ohio to sell an interchangeable mileage ticket which must be accepted by the Santa Fe. There is no contractual relationship between the two roads. There is no privity of contract between the two roads, and yet we are directed to require the sale of such tickets by the B. & O., which must be honored by the Santa Fe.

Suppose we take an illustration: Can Congress order all the national banks in the United States to honor the drafts, within limited amounts, after the analogy of the mileage ticket, of all other national banks? Is not that practically what would be required in a case which says that the commission shall require a given road to honor the tickets sold by another road, without privity of contract, without contractual relationship existing between the two. The language of the bill—

Mr. JONES. Mr. Esch, may I interrupt you?

Mr. ESCH. Yes.

Mr. JONES. Is not that exactly what happens with reference to the freight rates?

Mr. ESCH. I beg your pardon.

Mr. JONES. Does not the commission now fix a rate that is binding on two different roads?

Mr. ESCH. You mean a joint rate?

Mr. JONES. Yes.

Mr. ESCH. But the carrier first files its schedule of the joint rates and such schedules must be approved by the commission and it must be published to the public, so that any exceptions can be taken.

Mr. JONES. But, ultimately, the commission can fix the joint rates.

Mr. ESCH. We can fix the joint rates.

Mr. JONES. Contrary to the express wishes of one of the parties to the contract.

Mr. ESCH. We can determine the amount of the joint rates.

Mr. JONES. Even contrary to the express desire of one party to the contract.

Mr. ESCH. As to the amount.

Mr. JONES. Yes.

Mr. ESCH. If we think it is unreasonable, the Congress has given us the power to fix the just and reasonable rate.

Mr. NEWTON. I would like to ask you a question right there, Mr. Esch. Is this what you have in mind? For example, the Minneapolis & St. Louis Road might sell one of these interchangeable mileage books and get the money for it. Then, later on, it would be presented to the Baltimore & Ohio. In the meantime, something may have happened to the financial standing of the Minneapolis & St. Louis, so that when the Baltimore & Ohio attempts to get the money from the Minneapolis & St. Louis, they will find it is not forthcoming; is not that the thought?

Mr. ESCH. That is one thought.

Mr. NEWTON. And that is depriving the carrier of property without due process of law.

Mr. ESCH. Yes; and you could take this illustration: A road would sell this 5,000-mile interchangeable mileage book and after its sale it may be lost or it may be stolen, and although the purchaser may notify the selling road of the loss or theft, nevertheless that ticket would be used by the thief or the finder and the selling road would have to honor it.

Mr. NEWTON. Now, taking the question of freight rates, in the division of a joint freight rate, would not the same thing apply and the road either collecting the money after the carriage has been completed or if the freight was paid in advance, there would be a retention of the funds in either case and an inability to pay. Are the two cases distinguishable?

Mr. ESCH. Yes; there is a contractual relationship there.

Mr. NEWTON. In every instance with reference to the freight.

Mr. ESCH. Yes; because you see the joint rate is agreed to by what is known as the filing of concurrences with the commission and powers of attorney; but in the sale of these interchangeable mileage tickets under this bill, of course, there is no such concurrence.

Mr. NEWTON. And the element of contract is missing?

Mr. ESCH. Yes.

Mr. NEWTON. I thought it might be missing also in connection with the joint rates.

Mr. ESCH. No; because there they file concurrences which is an assent to the terms of the contract.

Mr. BARKLEY. Is it not a fact that the reason the contractual element is not missing in the freight situation is that the law requires these railroads, subject to the act to regulate commerce, to have joint contracts?

Mr. ESCH. Yes.

Mr. BARKLEY. With reference to the hauling of freight.

Mr. ESCH. Yes.

Mr. BARKLEY. And so we might by analogy compel them to have joint contracts with reference to hauling passengers.

Mr. ESCH. Yes; but I am talking of the pending bill.

Mr. GRAHAM. Before you leave that point, Mr. Esch, I would like to ask you a question, and I will not detain you long. Does not your body have power under this provision "before making any order requiring the issuance of any such tickets, the commission shall make and publish such reasonable rules and regulations for their issuance and use as, in its judgment, the public interest demands"—do you not think your commission would have power under that general language, if this bill became a law, to provide for the redemption by the various roads of these interchangeable mileage slips; in other words, that they account to each other? Do you not think you have that power?

Mr. ESCH. Oh, yes; we could probably fix regulations for redemption through a clearing house. That is done by them now, you know, in the sale of interchangeable mileage tickets.

Mr. GRAHAM. I was just imagining—

Mr. ESCH (continuing). But they are all roads that have agreed to that interchangeable mileage ticket. They have agreed to that.

Mr. GRAHAM. Yes; I know that.

Mr. ESCH. But there is no agreement here.

Mr. GRAHAM. If the Interstate Commerce Commission is required by statute to make these roads issue these interchangeable mileage books, have you not, as a necessary power auxiliary to this act, the right to compel them to make an accounting with each other?

Mr. ESCH. I think we could compel an accounting; yes.

There is another phase of this matter that I desire to call to your attention for what it may be worth. The President, during Federal control, fixed the mileage rate at 3 cents a mile. After the Labor Board, in June, 1920, increased the labor roll by \$618,000,000, and after the Interstate Commerce Commission had fixed the level of the rates, pursuant to the transportation act, the commission felt compelled to increase the rates to take care of the \$618,000,000 added to the pay roll. It was felt that the whole burden of increased rates should not fall on freight rates, and, so, there was a 20 per cent additional charge made on passenger fares, largely to take care of this increase in the pay roll. The commission fixed the rate at 3.6 cents per mile, which is the existing average fare throughout the United States.

If this bill is enacted it is to be assumed that, for the purposes of its enactment, there shall be a reduction in the rates for the mileage ticket. If that were not its purpose there would be little use in introducing the bill. If, then, the purpose of the bill is a reduction in the rates to be charged for mileage tickets, as contrasted with the general, average fare, what effect would such reduced rates for the interchangeable mileage ticket have upon the carrier's revenues in certain portions of the United States?

In the States of Nevada, Arizona, Utah, and New Mexico, the current average rate for one-way fare is 4.6 cents a mile, and on some of the roads in those States, and in the mountain section where transportation conditions are difficult by reason of grades, tunnels, and thinness of traffic, the rate is 6 cents a mile.

Now, if under this bill an interchangeable mileage ticket is sold, say, for 2½ cents a mile, which seems to be the general desire of those who have introduced these mileage-ticket bills, it would enable the holder of such ticket to travel on the railroads of these four States for 2½ cents a mile, while a passenger sitting in the same seat, buying a one-way fare, would be paying 4.6 cents and on some of the lines paying 6 cents.

Take another feature, if an interchangeable mileage ticket is sold at 2½ cents, would it not then eliminate payment of the surcharge when traveling in a Pullman? The surcharge for the Pullman is 50 per cent added to the regular fare. Would the sale of the interchangeable mileage ticket permit the holder to go into a Pullman and get the same service that a one-way passenger gets by paying the straight 3.6 cents fare plus the surcharge.

Mr. BARKLEY. The passenger who rides in the Pullman and pays the surcharge pays it in cash to the Pullman conductor, does he not?

Mr. ESCH. Yes.

Mr. BARKELEY. He does not pay it in the price of the ticket he buys from the ticket agent, and even if he had a mileage book, he would not be relieved of the surcharge for riding in the Pullman, if he had to pay the surcharge in cash to the conductor.

Mr. ESCH. It does not go to the Pullman Co., anyhow.

Mr. BARKELEY. No; it goes to the railroad company.

Mr. ESCH. Yes; it goes to the railroad company.

Mr. BARKELEY. I understand that, but he would have to pay it just the same.

Mr. RAYBURN. But your point is that he is paying a percentage of the cost of the ticket; is not that the point you make?

Mr. ESCH. Yes.

Mr. SANDERS. And the cost would be less because 20 per cent of the amount paid for a mileage ticket would be less than 20 per cent of the amount of the regular fare.

Mr. ESCH. Yes. Now, with those facts before us, there is another aspect to it which I think ought to be laid before you for such consideration as you may see fit to give; and that is the effect of the interchangeable mileage ticket upon carrier revenue. I need not tell you that the carriers have not

earned the 6 per cent under the transportation act during the last year. The returns which the commission have gotten for the month of January indicate returns of 2.6 per cent. Of course, January, is not a fair month to determine the revenues for the entire year, because January as a rule is a lean month in the railroad year, but, at any rate, you can see that it is materially lower than the amount which was authorized or contemplated in the transportation act.

How much advantage will be taken of the interchangeable mileage ticket should it be authorized under the pending bill, is a mere matter of conjecture. I do not know that there is any way in which we can estimate it with any approximation of the truth, but suppose that 25 per cent of the money that was invested in regular passenger fares during the last year was used in the purchase of these 5,000 interchangeable mileage tickets at 2½ cents a mile. That might represent a reduction of \$69,000,000 based upon the passenger revenues of the last year which amounted to \$1,152,000,000, exclusive of the Pullman surcharge and the commutation fares.

If this calculation is even approximately true, the question, then, is, Can the carriers stand so material a reduction in their revenues in the light of the returns that have come to us during the last year and during the month of January?

There is another consideration. Some railroads get most of their revenues from their passenger fares. This is particularly true of the New England roads, and I have in mind the New Haven Road. Over 50 per cent of its revenues, Mr. Chairman, I think come from passenger fares. Would the sale of these interchangeable mileage tickets make such a reduction in revenues for a railroad like the New Haven as to embarrass it in a financial way? I need not tell this committee of the financial status of the New Haven Road. The Government has an \$80,000,000 interest in the road now and some \$30,000,000 of French bonds become payable in May. It has been showing a little better in the last six months than the preceding, but at any rate it does not earn anywhere near the 5½ per cent authorized by the act. Would a material, further reduction by the use of interchangeable mileage tickets as to the New Haven so embarrass it as to bring it to bankruptcy?

There are other roads where the passenger revenues are exceedingly large and where a material reduction in the passenger revenues might lead to financial embarrassment.

As I stated in the beginning, the bill involves in large measure a question of policy, conceding the constitutionality of it, and it is for Congress to determine the matter of policy.

We had hoped in the commission that if we could find it possible to reduce fares and freight rates, we would like to reduce them in such manner that all our people could enjoy the benefits of such reductions. If the reductions in fares to a special class, as the purchasers of interchangeable mileage tickets would constitute a special class, materially reduce the revenues of carriers, will it not make it more difficult for us to order a general reduction in passenger fares which might be enjoyed by all of the people and not merely by those who by reason of financial conditions or otherwise are able to invest \$125 in a 5,000-mile ticket.

Mr. GRAHAM. You put that in the form of an inquiry, Mr. Esch, and unless it would embarrass you in some way, I would like to know what you think about it.

Mr. ESCH. The latter question?

Mr. GRAHAM. Yes; the last question you asked.

Mr. ESCH. I am embarrassed, because I am one of the four members of the commission who has been engaged for three months in this general rate inquiry which covered also passenger fares. The arguments have just been concluded, and we are about to consider the vast mass of testimony with a view to coming to some decision at an early date, possibly the first week in April. Some 9,000 pages of testimony were taken; 490 exhibits, covering many thousands of pages, were offered; 270 witnesses were heard. On account of that situation it would not be proper for me to forestall any action which the commission might take as to this general inquiry.

Mr. WEBSTER. Mr. Commissioner, reverting for the moment to the constitutional question which you presented during your statement, I have hastily looked over two of the cases. I refer to the Smith case, in 173 U. S., and the Towers case, in 245 U. S. I am impressed with the fact, from my hurried read-

ing, that the value of the Smith case has been greatly diminished by the decision in the Towers case, and I have serious question whether it is authority at all upon any case except one involving the precise facts presented to the court in the Smith case. In the Towers case, Mr. Justice Day, speaking for the court, uses this very significant language, after discussing the Smith case at some length :

" Having the conceded authority to regulate intrastate rates, we perceive no reason why such power may not be exercised through duly authorized commissions at rates fixed with reference to the particular character of the service to be rendered."

Mr. ESCH. Exactly. All of that relates to commutation fares as a distinct service which was held justified in the Maryland and Powers case, but in the Michigan case mileage books were dealt with, and the Supreme Court declared that to be a violation of the Constitution.

Mr. WEBSTER. And further on, after referring to a number of cases, including the Smith case, the court says:

" These cases indicate that the Smith case is not to be extended beyond the facts upon which it relates."

Mr. ESCH. I stated that.

Mr. WEBSTER. And then in the concluding part of the opinion this is stated :

" True it is that it may not be possible to reconcile these views with all that is said in the opinion delivered for the majority of the court in the case of Lake Shore and M. S. R. Co. v. Smith, *supra*. The views therein expressed which are inconsistent with the right of the States to fix reasonable commutation fares when the carrier has itself established fares for such service must be regarded as overruled by the decision in this case."

Mr. ESCH. I read that.

Mr. WEBSTER. Yes. Now, do you not think that in the light of this the Smith is of doubtful authority in any case not involving the precise facts upon which it was predicated?

Mr. ESCH. I said at the beginning that it is contended that the Powers case overrules the Smith case; but our division of law has claimed after a review of the decision that there was still left in the Smith case this very question of discrimination arising out of mileage tickets, and this bill relates to mileage tickets, not commutation tickets.

I submit what I have said with due regard for the views of others who may take the other view. I gave you the benefit of the best judgment that we have, leaving it to the committee to determine what their judgment shall be.

Mr. HOCH. Just one further question on that point. I understand that in the Smith case the decision rested upon the contention that there was discrimination, in view of the fact that a certain class was given a preferential rate. I understood from your statement of the case that the law was held unconstitutional on the ground that a certain class was given a preferential rate.

Mr. ESCH. It involved the question of discrimination; yes.

Mr. HOCH. Now, how would that precise question arise under the terms of this bill? Of course, if we prescribed a certain rate, or if the commission did as a matter of fact put into effect a lower rate than the current rate, the question would arise. But so far as this bill itself is concerned it simply prescribes the issuance of mileage tickets at a fair and reasonable rate. And the mere fact that there were issued interchangeable mileage tickets would not be a discrimination?

Mr. ESCH. No; I do not suppose it would. I can conceive that the commission might authorize the sale of interchangeable mileage at the current regular one-way fare.

Mr. HOCH. And by doing so it would comply with this law?

Mr. ESCH. And there would not be any discrimination in such a case.

Mr. HOCH. Then how does this affect the constitutionality of the bill before us?

Mr. ESCH. Well, I think that we have got to consider the spirit in which this act is intended, namely, that there shall be a material reduction in the regular fares now charged.

Mr. HOCH. That may be the purpose of those who are proposing it, but that does not involve the question of the constitutionality of the law. I would like to have it made clear as to how that constitutional question arises under this specific bill.

Mr. SWEET. Mr. Esch, has the commission any amendments to suggest that will cure the defects as to the constitutionality of this bill; that will make this bill workable?

Mr. ESCH. Well, I think, as to the constitutionality of the mileage tickets, that we do not know whether we could frame language which would cure such a defect. There might be some other language.

Mr. SWEET. That is the question that came into my mind as you answered Mr. Hoch's questions—that it appears that perhaps the bill as it stands is not unconstitutional.

Mr. HUDDLESTON. Mr. Esch, as I understand the case, which has been referred to as the "Smith case" and as the "Michigan case," it involved the constitutionality of a statute of the State of Michigan?

Mr. ESCH. Yes.

Mr. HUDDLESTON. That statute was held to be unconstitutional as violating the fourteenth amendment?

Mr. ESCH. Yes.

Mr. HUDDLESTON. Here it is proposed to pass a Federal statute. The fourteenth amendment is not applicable to Federal statutes, so that I want to ask what particular clause in the Constitution you find this particular bill violative of?

Mr. ESCH. Well, I suppose taking property without due process, in that it would take from the carrier the just compensation for what it had to sell.

Mr. HUDDLESTON. Then the constitutionality of this case would be determined by whether it would require that an unreasonably low charge for the mileage tickets should be fixed by the Interstate Commerce Commission.

Mr. ESCH. It would depend upon the fare; yes.

Mr. HUDDLESTON. And if this statute provided that the Interstate Commerce Commission should consider the cost of performing the service and then add to that a reasonable profit to the carrier and required the purchasers of these mileage books to pay the cost of carriage plus the cost of issuing the books, with a reasonable profit thereon, this statute would not be unconstitutional.

Mr. ESCH. No; I think if you put that in these terms.

Mr. HUDDLESTON. This bill may be construed as providing that the carrier shall sell mileage tickets at such rates below ordinary fares as the Interstate Commerce Commission may find will represent the advantage to the carriers from selling transportation wholesale and getting paid in advance, and any other matter that might be involved. If such construction is proper the statute would not be unconstitutional.

Mr. ESCH. I think if you put it in that form it might be all right.

Mr. BARKLEY. Mr. Chairman, even putting it in that form, the language of the act still might not be constitutional, unless the commission exercised authority conferred upon it, which would provide for such discrimination as would be manifestly not compensatory, therefore violating the fourteenth amendment.

Mr. ESCH. Sure.

Mr. BARKLEY. Is it your view and is it the view of the commission that the Congress has the same power to legislate with reference to passenger rates as it has with reference to freight rates on interstate commerce?

Mr. ESCH. Well, not speaking for the commission, I do not understand that there is any difference with reference to our power.

Mr. BARKLEY. Now, you mentioned a while ago the situation which might result from the passage of this act, wherein two passengers riding upon the same seat, one paying 4.6 per mile and the other 2½, which would result in a discrimination. Is that not precisely what happens now with reference to freight? Congress has provided that you may charge a smaller rate for a long haul than that charged for a short haul, a proportionally smaller rate, so that there may be one freight car going on a long haul next to one going on a short haul with a lower proportionate rate on the long haul than is to be charged on the short haul.

Mr. ESCH. Well, that distinction might be obviated provided the holder of the mileage ticket traveled the length of his ticket or a long distance, but there is no assurance that he will not get off at the next station.

Mr. BARKLEY. But if Congress can provide for discrimination because of distance, can it not provide for discrimination on account of the quantity of the service?

Mr. ESCH. Well, the commission has never, so far as I know, placed rates on the wholesale basis. It will carry one carload of freight for one shipper

to the same destination at the same rate that it carries 100,000 carloads for another shipper to the same destination. The wholesale principle, in other words, does not apply as to carload lots.

Mr. BARKLEY. It may not apply, but it might be made to apply if it were important enough either for the traveling public or the roads as to permit them to have a lesser rate per mile for a thousand miles than they charge for 200 miles.

Mr. ESCH. Well, it is a principle in rate making that the rate declines with the length of haul; that is true.

Mr. BARKLEY. Well, that is on the theory at least of wholesale, the larger the quantity of the thing, whether transportation or goods you purchase, you are supposed to get some reduction in rate.

Mr. ESCH. Some have said that wholesale rates, as an example, are higher on less than carload lots, as compared with carload, but that is a question completely of differentiation, because the less than carload usually travels but a small distance and at a greater or extra cost to the carrier, because of the commodity shipped and the storage, and so on, on less than carload shipments.

Mr. DENISON. I want to ask one question, Mr. Esch. Would not the same principle be involved exactly in permitting wholesale freight rates as in wholesale passenger rates? It has been suggested that Congress is able to direct the commission to grant wholesale passenger rates. You understand the conditions. Would not the same principle be involved as would be involved if we directed the granting of wholesale freight rates?

Mr. ESCH. No; Congress has never directed that.

Mr. DENISON. It has not; but even so, would not the same principle be involved?

Mr. ESCH. No; I do not think so. The question of mileage tickets is split up into an indefinite number of short hauls, or might be. In fact, that is the very reason why the people want interchangeable mileage tickets. So that really resolves itself into a retail proposition, instead of a wholesale proposition.

Mr. DENISON. Now let me ask you this: Is there any distinction between the items in this bill in granting this or in the practice of excursion fares?

Mr. ESCH. Excursion fares—the decision of the Supreme Court of the United States on the question of commutation fares is to the effect that a commutation fare is a distinct and separate character of service.

Mr. SANDERS. And that is a voluntary case.

Mr. ESCH. Yes.

Mr. SANDERS. This is mandatory, and the excursion case is merely permissible?

Mr. ESCH. Well, the statute now permits excursions and commutation fares.

Mr. SANDERS. Well, it permits 5,000 mileage rate, but that is permissible, and this is mandatory?

Mr. ESCH. Section 22 of the act distinctly authorizes the use of the 5,000-mile interchangeable ticket, and those are to be issued, however, subject to section 6 of the act, which requires the filing of a schedule with the commission and the giving of the legal notice of 30 days.

Mr. JONES. Mr. Chairman, I would like to ask Mr. Esch just one question. There are two passengers traveling from my home city, which is in Pennsylvania, one going to Philadelphia and the other coming to Washington, both of them traveling the same distance. Could both passengers use a mileage book under this act?

Mr. ESCH. You are making the point that one is traveling intrastate and the other interstate?

Mr. JONES. One is going to Philadelphia and the other is coming to Washington. One does not go outside of the State. Now, the point is whether both passengers can each use the mileage book?

Mr. ESCH. That is a matter which has been of considerable concern to the commission, as it has been raised in other cases. I think you would have to use the word "interstate" in this bill in order to legalize it.

Mr. JONES. Well, does it mean in here that the mileage is only usable where the passenger travels interstate?

Mr. ESCH. I would judge that our jurisdiction would not extend to anything else. Now, I may be wrong; and I am not expressing the views of the commission.

Mr. JONES. Well, then, according to your opinion, one passenger—the one going to Philadelphia—would have to pay the current rate of 3½ cents, and the passenger going to Washington could use the mileage book?

Mr. ESCH. This is to be remembered, Mr. Jones, that the passenger at your home town, for instance, buys a 5,000 mileage ticket.

Mr. JONES. Yes.

Mr. ESCH. And the other buys a ticket. When he buys that 5,000-mile ticket he uses it, whether he is going to Philadelphia or to Washington.

Mr. JONES. The point I raise is the question whether each could use a mileage book.

Mr. ESCH. In that case the seller of the ticket does not know that it is not to be used interstate, or intrastate, or how it is to be used.

Mr. JONES. But can a passenger use it to travel intrastate?

Mr. ESCH. Well, I have great doubt about it. I have great doubt about it.

Mr. SANDERS. Mr. Commissioner, the fatal distinction between this bill and the ordinary bill provides for the fixing of rates, the fact that this bill makes a uniform passenger rate for every carrier throughout the United States; is not that true?

Mr. ESCH. Yes; that is true; and I want to call your attention to the fact that the bill requires each carrier by rail to issue these mileage tickets and uses this wording, "Good for interstate passenger carriage upon passenger trains of any and all other carriers by rail"; but there are quite a number of carriers by rail in the United States that do not file with us any passenger schedules at all, indicating that they do not do a passenger business. Now, in a case of that kind can we compel a railroad that does not do a passenger business to honor a mileage book sold by some remote road? The bill here does not exempt such roads.

Mr. SANDERS. Well, I did not have that particularly in mind. This is the point I am trying to get at: There is a provision here that these carriers are required—shall be required—by your order to issue mileage tickets at a just and reasonable rate per mile. Now, as I construe that, that means so far as these interchangeable mileage tickets are concerned people who buy that sort of transportation are to have uniform passenger rates throughout the United States by each carrier engaged in interstate commerce.

Mr. ESCH. I think that is the intent.

Mr. SANDERS. That means where a carrier under the ordinary rule of just and reasonable compensation as fixed by the commission here, that the carrier is now permitted to charge 5 cents per mile, and where you have another carrier you permit, under special circumstances and under different conditions, to charge 3 cents per mile; where the ordinary carrier rate applies to all railroads, the law allows them to receive 3 cents and 5 cents per mile, and which must be charged by those two roads.

Mr. ESCH. That is the objection.

Mr. NEWTON. Mr. Esch, in reference to that, if I get your impression clearly, then, if this bill became a law it really would not confer upon the commercial traveler who might stop intrastate any benefit at all, because the carrier would have the right to refuse to accept the mileage book in payment of intrastate fare?

Mr. ESCH. Yes; his remedy would be to get his State legislature to pass a State mileage book law.

Mr. MERRITT. Would not that be contrary to the Smith case?

Mr. ESCH. Yes; it might be.

Mr. MERRITT. And it would also—might also—run counter to the last decision of the Supreme Court in the Wisconsin case. Now, it seems, Mr. Esch, that the Supreme Court in the Wisconsin case so restricts the power of the State commissions with reference to fixing intrastate rates that the Congress has jurisdiction, and has delegated that to the Interstate Commerce Commission, to fix a rate which would be good, whether interstate or intrastate. In other words, we have practically deprived the State commissions and the State legislatures of the power to fix the rates and that Congress has the power to fix both interstate and intrastate rates?

Mr. ESCH. Well, not under the decision of the Supreme Court in the Wisconsin case.

Mr. LEA. Mr. Esch, would not the commission fully comply with this law, or this proposed law, if it granted an interchangeable mileage rate of 10 per cent, for instance, less than the existing fares so that if you had an existing rate

of 5 cents per mile on one road and 3 cents per mile on another road, the 10 per cent would be based on those rates, and the rate would be 4½ cents on one road and 2½ cents on the other road. In other words, the rates would be on a percentage basis and would not necessarily require a uniform rate over every road?

Mr. ESCH. That might make some difference. You might make some differential affecting that.

Mr. LEA. Yes; but the principle involved, is not that true, would be the principle of this act?

Mr. ESCH. You mean with the bill?

Mr. LEA. With this bill, yes.

Mr. ESCH. Well, I am not clear that it would be, Mr. Lea.

Mr. SANDERS. May I ask a question, Mr. Lea?

Mr. LEA. Yes.

Mr. SANDERS. If that were true, they would not be interchangeable mileage tickets. Interchangeable mileage, as I understand the word "interchangeable," means use in one place or use in another place, or use in any place.

Mr. LEA. They could still be used any place; but it would be a different amount, according to the class of road on which the passenger rode.

Mr. SANDERS. You mean that the commission could say under this law that a man would not only buy a ticket but, in addition, he would have to pay an additional amount?

Mr. LEA. No; the ticket would be good. It is a question of different fares. This mileage ticket would be accepted by the railroad company in proportion to the fare charged on the road. You would have to pay a larger proportionate number of coupons on each class of roads.

Mr. SANDERS. Yes; but this says so much per mile, a mileage rate of so much.

Mr. LEA. This does not require a certain amount. What part do you refer to?

Mr. SANDERS. Lines 11 and 12 of page 1.

Mr. LEA. That provides for a just and reasonable rate per mile. Now, a just and reasonable rate per mile means one thing for one road and another thing for another road.

Mr. SANDERS. Yes; but a ticket to be interchangeable—it would not make any difference whether you were riding on the Pennsylvania or the B. & O. or what railroad you were riding on.

Mr. LEA. Oh, yes, it does; because a reasonable rate for one road may not be a reasonable rate for another.

Mr. SANDERS. Yes; but I was merely making an inquiry, because it looked to me like the statute meant that you would have an interchangeable ticket at so much per mile. That is the way I was looking at it.

The CHAIRMAN. Gentlemen, the hour of concluding the hearing, by agreement, has arrived. What is the pleasure of the committee as to when we will meet to take this bill up again?

Mr. COOPER. Mr. Chairman, I move that we continue to-morrow morning at 10 o'clock.

The CHAIRMAN. Mr. Cooper moves that we continue to-morrow morning at 10 o'clock. Are there any objections? The Chair hears none, and it is so ordered.

(Whereupon the committee adjourned to meet at 10 a. m. Wednesday, March 22, 1922.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, March 22, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. If the committee will come to order, we will proceed with the further consideration of Senate bill 848. The chairman would ask Senator Smith, representing the National Council of Traveling Salesmen's Association, to make a statement, if you please.

**STATEMENT OF HON. HOKE SMITH, ATTORNEY AT LAW,
WASHINGTON, D. C.**

Mr. SMITH. Mr. Chairman and gentlemen, I do not represent this association professionally, but I have for a long time believed intensely in the value to the country of the work of the commercial traveler, and I have believed that all

lines of occupation would be benefited by giving to them an interchangeable mileage book at a reduced rate. I had the privilege of putting through such a measure 15 years ago when governor of Georgia, applicable to intrastate rates. It was a great success, and so satisfactory to the railroads that I learned they instructed their conductors in adjoining States to even recognize it in interstate business.

I have a letter from Senator Underwood which he desired me to read to the committee, assuring me of his very earnest support of this measure. It says: "I am glad to confirm what I have already said to you—that I am heartily in favor of the passage of this bill. I believe that it is a much-needed relief to the traveling public and its passage would encourage the movement of passengers on the railroads and to a large extent, in my judgment, would make up for a reduction of the present rates. I sincerely hope that the bill which passed the Senate will receive favorable action in the House of Representatives."

The organizations of traveling men for whom I speak originally desired a bill passed fixing a rate, definitely requiring a reduction of the rate, but they believe now that the best course will be to pass this Senate bill as it came to the House. Any other course would involve delay and involve, perhaps, some questions of law. They feel, therefore, that for the Interstate Commerce Commission simply to receive direction to exercise its authority to require such mileage book will bring speedy relief and free the measure from possible complication.

I wish especially this morning to reply to the argument of Commissioner Esch in which he questioned the constitutionality of this bill that the Senate has passed.

He based his criticism largely upon the case of Lake Shore against Smith, commonly known to the profession as the Michigan case. In that case the State of Michigan had undertaken to put into effect a measure requiring the railroads, when the ordinary fare was 3 cents a mile, to issue an interchangeable mileage book at 2 cents a mile, good for every member of the family of the man to whom issued, the ticket to continue good for two years when the railroads had never issued tickets for longer than one year, and the bill required that the railroads should redeem the book if any part of it had not been used. There were other features of this measure that I need not detail. In that case the Supreme Court of the United States held the act, with all those detailed requirements, was unconstitutional. It is well known to the profession that this decision has never been followed by the Supreme Court of the United States. There were three judges who dissented at the time. Judge McKenna alone of those upon the bench at the time is still upon the bench, and he was one of the three who dissented from the conclusions then presented by the Supreme Court.

The Supreme Court, among other things, questioned the propriety of giving to a class a rate different from the ordinary rate given to all persons. It questioned the propriety of giving a lower rate to tickets sold at wholesale from those sold at retail, and the ticket was to be good for all the family of the holder. They dwelt upon the fact that this ticket was to be good for two years when the railroads, according to their practice, never gave a ticket good for longer than one year. They dwelt upon the fact that anything unused of the ticket was to be redeemed and that the 2-cent rate of the ticket was so far below the ordinary rate of 3 cents that it was extreme and unreasonable.

Now, the Supreme Court of the United States has held with reference to that case that it would not be extended at all beyond the entire facts contained in that case. They have in one opinion laid down rules entirely contrary to the line of thought of the Supreme Court in the Smith case.

Mr. GRAHAM. In what opinion?

Mr. SMITH. I will give it to you in a few moments, if you will let me. I will read you the extracts from the opinions.

They have said that the argument used was more of reasoning than decision.

Now, the first case to which I will call your attention is that of *Arkadelphia Milling Co. v. St. Louis & Southwestern Railway*, in the Two hundred and forty-ninth Supreme Court Reports. The opinion begins on page 134. In this case the Supreme Court say, referring to the *Lake Shore v. Smith* case:

"The discrimination in favor of certain patrons there referred to was laid hold of rather as showing the unreasonable character of the regulation. The authority of that case is not to be extended."

Again, they said in that opinion:

"It is most thoroughly established that before one may be heard to strike down State legislation upon the ground of its repugnancy to the Federal Con-

stitution he must bring himself within the class affected by the condition feature."

Now, this was a case in which State legislation had given a lower rate for certain freights under certain circumstances. It applied to lumber. It provided that rough lumber should receive a lower rate if the shipper sending it to the mill, shipped a certain quantity of the manufactured product over the same road on which the lower rate was required for the rough lumber. The criticism was made that this gave a discriminatory rate on account of the quantity, and the Supreme Court sustained the action of the State authority and sustained the lower rate under those circumstances, rendering the decision that I just called your attention to, and the language used, "Lake Shore did not set aside this established principle. * * * the discrimination in favor of certain patrons there referred to was laid hold of rather as showing the unreasonable character of the regulation. The authority in that case seems to be extended."

So that in the case I have just brought to your attention they did sustain State action, which gave a lower rate on account of the quantity of the shipment and the character of the shipment.

In the case of the Pennsylvania Railroad Co. v. Towers (245 U. S. 612) the court overruled a part, at least, of the decision in the Lake Shore case and declared that such parts of that decision which are in conflict with the view presented in this case shall be considered as overruled. They had already declared that it should not be extended beyond the facts in that case, all the detailed facts, and in this case they declare that they overrule it to a considerable extent.

Reading from the body of the opinion, they cite 145 United States 23, in the case of Interstate Commerce Commission v. Baltimore & Ohio Railroad Co., in which case "this court held that a 'party rate ticket' for the transportation of 10 or more persons at a less rate than that charged a single individual did not make a discrimination against an individual charged more for the same service or amount to an unjust or unreasonable discrimination within the meaning of the act to regulate commerce."

Now, stopping for a moment to comment on that Baltimore case, in the Lake Shore case they said in the argument of the majority that the rate was objectionable because it sought to apply a lesser rate where the sale of the transportation was at wholesale than where it was at retail, yet in the Baltimore & Ohio case they sustain a lower rate per person for 10 people buying a single ticket for the 10 than that allowed to the individual, and sustain the doctrine that the wholesaling of passenger transportation could be put at a lower rate than that issued to the individual. So that in this Baltimore & Ohio case they laid down a rule entirely in conflict with the argument in the Lake Shore case, and in the case I am now asking you to consider, the Towers case, they cite that Baltimore case with evident approval. A little later on I will come to the fact that they announce at the conclusion of this opinion that anything in the Lake Shore case in conflict with the views herein presented will be considered as set aside.

In the Towers case, after citing a number of cases, the court said: "The reasoning of these decisions is sound and involves no violation of the Federal Constitution."

One of these decisions was the Baltimore & Ohio case, to which I have called attention. Then the court said:

"True it is that it may not be possible to reconcile these views with all that is said in the opinion delivered for the majority of the court in the case Lake Shore & Michigan Southern Railway Co. v. Smith, *supra*. The views therein expressed which are inconsistent with the right of the States to reasonable commutation fares when the carrier has itself established fares for such service, must be regarded as overruled by the decision in this case."

Mr. GRAHAM. May I interrupt there? Mr. Esch seemed to place reliance on that particular language, where the carriers have once established fares, spoke of the distinction between commutation tickets and interchangeable mileage, in one case the carriers having voluntarily fixed some commutation rates, and that then the State could act upon that or whatever body had jurisdiction over it; but where there was no such thing as interchangeable mileage the establishment of such a thing was an entirely different principle. Now I would like to have your idea about the distinction between the two, if there is any.

Mr. SMITH. The Supreme Court in several instances has held that the fact that the railroads had done it was no reason why the Interstate Commerce Commission could do it or could not do it. I am familiar with those decisions and will be glad to furnish them to you, although I have not a memorandum of the exact decisions with me.

Mr. GRAHAM. I think they should be put in the record so that we can find them.

Mr. SMITH. I will be glad to furnish them.

Mr. GRAHAM. Well, what is the difference between a commutation ticket and a mileage ticket?

Mr. SMITH. On principle, none.

Mr. GRAHAM. That seems to be given particular weight by the commissioner in what he says here.

Mr. SMITH. My views are so radically different from those of the commissioner and my views of what the Supreme Court has decided are so different from his that I present these decisions to show that in the Baltimore & Ohio case they ruled squarely that the wholesale prices of passenger fares could be put at a lower rate than the retail price; this was entirely in conflict with the reasoning in Lake Shore v. Smith. In the case in the two hundred and forty-ninth United States Reports, to which I will call your attention, again, they recognize the fact that in freight rates a lower rate could be given to unfinished lumber providing the shipper also handled over that road the manufactured lumber, and in this case they cite those decisions with approval or cite the Baltimore & Ohio case with approval, and then approve a regulation requiring commutation tickets, intra and inter state, showing a clear recognition of the principle that different situations justify different rates, and that the discretion as to those matters is vested either in the State authorities for State transportation, or the Interstate Commerce Commission for interstate transportation, limited only by provision of the fifth and fourteenth amendments, applicable to confiscation. The rates can not be confiscatory.

Mr. GRAHAM. I wish you would insert in your remarks, when you revise them, the authorities you refer to.

Mr. SMITH. I will, with pleasure.

Mr. BURROUGHS. May I ask the Senator a question? Senator Smith, do you happen to know, so that you could state at the moment, whether the Baltimore & Ohio decision, to which you have referred, was decided subsequent to the Lake Shore case?

Mr. SMITH. The Baltimore & Ohio case was in 145 United States, and the Lake Shore case was in 173 United States. The Baltimore & Ohio case antedated the Lake Shore case, but it was approved in 245 United States. I read it from 245 United States, where it was cited and where the Supreme Court approved the rules laid down in the cases which they cited and questioned the Lake Shore case.

Mr. BURROUGHS. That is the Towers case.

Mr. SMITH. This is the Towers case; yes.

In the Towers case, page 10, the Baltimore & Ohio case is cited with the statement that it held a—“party rate ticket for the transportation of 10 or more persons at a less rate than that charged a single individual did not make a discrimination against the individual charged more for the same service, or amount to an unjust or unreasonable discrimination, within the meaning of the act to regulate commerce.”

The court in the Towers case then further said:

“Having the conceded authority to regulate intrastate rates, we perceive no reason why such power may not be exercised through duly authorized commissions and rates fixed with reference to the particular character of the service to be rendered.”

On page 11 the court said:

“That the State may fix maximum rates governing one-way travel is conceded. Having the general authority to fix rates of a reasonable nature, we can see no good reason for denying to the State the power to exercise this authority in such manner as to fix rates for special services different from those charged for the general service. In our opinion the rate for a single fare for passengers generally may be varied so as to fit the particular and different service which involves, as do commutation rates, the disposition of tickets to passengers who have a peculiar relation to the service. The service rendered in selling a ticket for one continuous trip is quite different from that involved in dispos-

ing of commutation tickets where a single ticket may cover 100 rides or more within a limited period. The labor as well as the cost of selling them, is less than is involved in making and selling single tickets for single journeys to one-way passengers."

It must be perfectly obvious that this reasoning applies with even more force to the sale of a single ticket covering 2,000 miles of travel, and it recognized the discretion to reduce the rate for such a ticket. This entire view is in conflict with the reasoning in the *Lake Shore v. Smith* case.

In the *Towers* case the court also calls attention to the case of the Norfolk & Western Railroad Co. v. Conley (236 U. S. 605), and quotes from this decision as follows:

"It was recognized (in the North Dakota case) that the State has a broad field for the exercise of its discretion in prescribing reasonable rates for common carriers within its jurisdiction; that it is not necessary that there should be uniform rates or the same percentage of profit on every sort of business; and that there is abundant room for reasonable classification and the adaptation of rates to various groups of services."

This principle again is in conflict with the reasoning in the *Lake Shore v. Smith* case, and is in line with statements by the Supreme Court that the *Lake Shore v. Smith* case would not be extended beyond the exact facts in that case, and those facts never in detail arose anywhere else, and will not arise again.

Mr. MAPES. Is it necessary to assume, Senator Smith, for the purpose of the consideration of this Senate bill, that if it should be enacted into law that it would require these mileage books to be issued at a less or cheaper rate—

Mr. SMITH. No; it is not.

Mr. MAPES (continuing). Than the regular passenger rate.

Mr. SMITH. The bill as it passed the Senate does not require that they shall be.

Mr. MAPES. All of those cases that you have cited and that the commissioner has cited are based upon that theory.

Mr. SMITH. Upon the theory that they will be lower. I think they ought to be lower, and therefore, although the bill does not require me to sustain that view, to support the bill, I undertook to support the doctrine that they can be made lower by the Interstate Commerce Commission, as I expect them to do it.

Mr. MAPES. During the period of Federal control they were issued and used with no reduction whatever. I did not have a chance to ask the commissioner this question yesterday, and perhaps you can answer it: Do you know whether that was general practice over the country, and if so, what provision was made in those States where the rate was higher than it was in the eastern States?

Mr. SMITH. I do not know what provision was made with reference to that subject, but I am informed that even in those States where the rates, locally, are lower, that an interstate ticket is sold from Chicago to the Pacific Ocean, going straight through, at a rate much less than their local rate; that they voluntarily enter into a transaction by which these interstate tickets across the continent pass through those States which require a higher local rate, with the ordinary rate applicable to the entire ticket.

Mr. MAPES. What do you say about the absence of contractual relations between the roads to which the commissioner referred yesterday.

Mr. SMITH. I come to that question now. If the committee does not wish me to say anything more about the *Lake Shore* case, I would be glad to come to that proposition now.

Mr. HUDDLESTON. Before Senator Smith leaves the Michigan case, I would like to ask a question. I fail to grasp his interpretation as to whether the principle announced in that case was affected by the subsequent decisions.

Senator SMITH. Yes.

Mr. HUDDLESTON. I was going to say that the decision seems to hold to a certain conclusion merely as applied to a certain set of facts.

Mr. SMITH. Yes.

Mr. HUDDLESTON. I am wondering whether the principle upon which the Michigan case was founded, or was decided, was affected by the later decisions.

Mr. SMITH. Yes. The principle—I do not find any principle announced in the Michigan case.

Mr. HUDDLESTON. I was just going to say that from the explanation given of the case I had failed to grasp any.

Mr. SMITH. I find them putting a half dozen different facts, which together made an extreme case. I think if I had been hearing that Michigan case I would have held that to arbitrarily reduce the rate from 3 cents to 2 cents, and to make it good for every member of the family, and to make it good for

two years, and to make the railroad redeem any that was left over was confiscatory.

Mr. WEBSTER. And to divide the State into zones and provide a rate different in the two zones.

Mr. SMITH. Yes; and to divide the State into zones with a different rate in the two zones reached a status where, under the fourteenth amendment, it was confiscatory. It was an interference with private property without due process to the extent that it was confiscatory. I think the bill as a whole was extreme and unreasonable. Now, no exact principle is applied to it except, as a whole, it could not stand.

Mr. BARKLEY. And that decision is only to apply to cases where the facts are exactly the same, and probably no such case would ever happen again.

Mr. SMITH. The Supreme Court has held that that decision must be understood as applying solely to all the facts that were in that case, and it has held in the Baltimore case that that part of the reasoning which did not allow a wholesale sale of transportation at a less rate than retail was not sound. It has held it again as applying to freight in the St. Louis case and it then, quoting the Baltimore case and other cases on the same line, has held that anything in the Lake Shore case in conflict with the opinion in the Towers case is overruled; and it held in the other case that I called your attention to, in 245 United States, that the Michigan case would not be extended beyond the facts of that case. In other words, they have cut it down to a decision that reaches no general principles of law beyond the proposition that a State can not confiscate the property of a citizen, and have confined it to all the details in that case. There never was another case with the same details and there never will be another. So I insist that the Supreme Court has eliminated the effectiveness of the Lake Shore case so far as this legislation is concerned, or so far as the Interstate Commerce Commission is concerned, if they give a lower rate for the wholesale mileage books.

Mr. SANDERS. Senator, before you go into the question of the contractual relations between the carriers, I should like to know just what construction you give the act as it came from the Senate. The act says that the commission is directed to require each carrier by rail subject to this act—and that means all the carriers that there are that deal in interstate commerce—to issue at such offices as may be prescribed by the commission joint interchangeable mileage tickets at a just and reasonable rate per mile, good for carriage on passenger trains of any and all carriers by rail subject to this act. I have omitted some expressions, but have used the language I wanted to convey the idea. Now, do you construe that to mean that it is a mandate to the commission to require every carrier engaged in interstate commerce to issue these tickets, and that it requires a uniform ticket and that the effect of it, under the present language, would be to give a uniform rate of fare throughout the country?

Mr. SMITH. I think this ticket must be a uniform ticket, but I think the power to prescribe rules and regulations, found in the bill later on, would allow the Interstate Commerce Commission, in certain territory on certain lines, to do just what is done with reference to the Pullman tickets, to say: "Here, on account of peculiar conditions, while you have your interchangeable mileage book, you shall pay a differential." I think that power would be in the commission, if it deemed it necessary to do so. The ticket itself would be good everywhere—

Mr. SANDERS. Yes; the language says—

Mr. SMITH (continuing). But under the rules and regulations a differential could be added to the ticket required in particular local transportation.

Mr. SANDERS. I do not think the language of the present act in its present form would justify that construction.

Mr. GRAHAM. Senator, before you proceed further, I have asked the preceding witness this question, and I want to ask you: How do you interpret that language, "good for interstate passenger carriage," in lines 12 and 13, upon page 1? Here is the query in my mind: Under the Wisconsin case almost anything nowadays is interstate traffic, whether inside of a State or outside of a State, because it goes to make up that level of rates which the Supreme Court seems to think Congress has intended to establish. Suppose a ticket issued under this bill, if it became a law, was presented to a conductor for a strictly intra-state trip, do you imagine that under any construction the carrier might be justified in refusing to accept it?

Mr. SMITH. If you had asked me that question a few years ago I would have said "Yes; he could have refused it." Under the broadening interpretation of this power by the Supreme Court, a broader view of the Constitution has been accepted from what I entertained, say, 10 years ago, and as far as their constitutional authority goes, they can go. Just exactly where that stops I do not know.

Mr. GRAHAM. What do you say about this proposition: It is a question in all of our minds just what that would mean in actual practice, although I am inclined to think that under the Wisconsin case it would be good for a trip inside of a State, under the present rules, but why have it in here?

Mr. SMITH. To make sure that the bill is not subject to constitutional criticism.

Mr. GRAHAM. Well, I do not know whether that does it or not. If it was out of there the court would construe it in the most favorable light, would it not? It would hold the act to be constitutional under any interpretation that it could.

Mr. SMITH. I would if I were on the bench—

Mr. GRAHAM. I think that is the ordinary rule.

Mr. SMITH (continuing). And I think the courts probably would.

Mr. GRAHAM. I will confess that it bothers me a good deal as to just exactly what that means.

Mr. SMITH. I do not think it interferes with the effectiveness of the bill. I think, under the bill as it is drawn, the Interstate Commerce Commission can exercise all the power it has upon the subject.

Mr. JONES. Senator, the way this bill is now worded, do you not limit the use of the mileage tickets for interstate carriage? It says "shall issue joint interchangeable mileage tickets good for interstate passenger carriage"—now, what is good? The ticket, of course. The ticket is good for interstate passenger carriage. Now, if that ticket is just good for interstate passenger carriage, why can they not simply authorize the conductors not to accept it for an intra-state carriage. In other words, I believe that if the limitation or the qualifying clause of the interstate relationship, in order to give Congress power to enact a law, were used after the word "rail" on line 9 and left out where it is, then you would probably have a joint interchangeable mileage book good on any road engaged in interstate commerce; but the way you have it now, you limit the use of the mileage book to a passenger who is traveling interstate.

Mr. SMITH. I think, under the Wisconsin case, they certainly have the power to apply it to all the roads engaged in interstate commerce.

Mr. JONES. Do you think it is good policy to pass legislation in the hope that the courts will give a certain interpretation to it, and gamble about it and guess at what is the intention of Congress?

Mr. SMITH. I would like to see a bill that would certainly control the matter on all roads where the Interstate Commerce Commission could control it. I would regret to see delay about the passage of the bill.

Mr. JONES. Pardon me, but I think that is the fear in this bill. It is a Senate bill, and the fear of the proponents is that the least amendment—and, of course, it would have that effect—would throw it back to the Senate or into conference and delay it. My opinion is that the proponents of this bill have gotten to the position where they are willing to take the chance of interpretation rather than to have that delay; and whether that is the part of wisdom or not, I am not sure.

Mr. SMITH. Well, I submit that to the judgment of you gentlemen who have charge of the legislation. Of course, the broader it is the better pleased I would be with it, because the more good I think it would accomplish.

Mr. JONES. Another question: What do you understand the words "joint interchangeable" mean?

Mr. SMITH. It means this: A ticket issued at any particular office good everywhere.

Mr. JONES. That would be interchangeable; now, what does "joint" mean?

Mr. SMITH. I do not see that the word "joint" adds anything to it. I think it would be equally good without the word "joint."

Mr. JONES. They got that from a freight tariff. I presume.

Mr. SMITH. Yes; they have just taken that from the expression heretofore used.

Mr. COOPER. Senator, it is hard at times for a layman to understand some of these great questions of law, and I am trying to get clear on this bill and I want to ask you two or three short questions.

Mr. SMITH. Certainly, sir.

Mr. COOPER. What is your opinion regarding the constitutionality of this bill as it comes to us from the Senate?

Mr. SMITH. I have no doubt about its constitutionality.

Mr. COOPER. Now, in other words, the question of the constitutionality can not be raised until the Interstate Commerce Commission has directed the carriers to do a certain thing. Am I right about that?

Mr. SMITH. Yes.

Mr. COOPER. Then this committee has no right to assume that the Interstate Commerce Commission is going to do something that is unconstitutional, has it?

Mr. SMITH. I do not think so.

Mr. COOPER. That is all I wanted to ask.

Mr. MERRITT. Senator, I want to get away for the moment from the legal side of this proposition to ask you one or two questions as to the justice and equity of some of these propositions. Section 2 provides that the commission may require each carrier by rail to issue at such offices as may be prescribed by the commission joint interchangeable mileage tickets. Does that mean that a general order must be made so that each carrier—for instance, a short line 180 miles long in some section of the country—must provide for issuing interchangeable mileage tickets?

Mr. SMITH. If it was entirely an intrastate road the legislation would not apply to it at all.

Mr. MERRITT. But there are lots of such roads that are subject to the jurisdiction of the Interstate Commerce Commission.

Mr. SMITH. Not if they are entirely beginning and ending in the same State.

Mr. MERRITT. Oh, yes.

Mr. SMITH, I do not think so.

Mr. JOHNSON. Mr. Chairman, may I interrupt just a moment? Mr. Merritt, I call your attention to a case decided by the Supreme Court on the 13th day of this month in which they uphold the statement of the Senator, the case of Texas v. The Eastern Railroads.

Mr. SMITH. Yes, sir.

Mr. JOHNSON. A case absolutely in point.

Mr. SMITH. I do not think it would apply to a road of that sort.

Mr. MERRITT. There are plenty of interstate railroads where the jurisdiction of the commission could not be questioned which are very short-line roads.

Mr. SMITH. Yes. My own view is that the rules and regulations provision in this bill would authorize the Interstate Commerce Commission in fixing their rates to fix the mileage book good on all roads under their jurisdiction and provide that in certain particular places there should be an additional differential paid besides the mileage book.

Mr. MERRITT. I was going to advert to that phase of it in my next question. This bill provides that these interchangeable mileage tickets must be issued at a just and reasonable rate per mile, which presumably must be the same rate, and are to be good upon the passenger trains of any and all carriers.

Mr. SMITH. Yes.

Mr. MERRITT. Now, as I understand it, in certain sections the rates now instead of being 3½ cents a mile, we will say, are 5 or 6 cents a mile.

Mr. SMITH. Yes.

Mr. MERRITT. Is it just to require those roads to make such a tremendous differential?

Mr. SMITH. I think that is left entirely to the Interstate Commerce Commission to decide. I think the provisions with reference to rules and regulations would authorize them, while this ticket is to be used everywhere and accepted, to provide for its issue under a provision that at certain places, on account of peculiar conditions, there should be an additional sum locally paid, the ticket going in part and a certain sum in addition paid.

Mr. MERRITT. That is a rather violent interpretation, is it not?

Mr. SMITH. I do not think so. I think the ticket goes and the differential could be charged, although in the debate upon this subject Senator Pindexter called attention to the fact that in these very States all through the West where these especially high rates were locally allowed the railroads themselves accepted the through tickets with the same rate from one end of the country to the other, and made no point about it and voluntarily did it.

Mr. JONES. Right there, in the accounting between the railroads, though, they get a larger percentage of the through passenger fare than they otherwise would get if the rate were on the same basis. They adjust that in the accounting between themselves.

Mr. SMITH. They do; yes. I think that the Interstate Commerce Commission could cover that also in their rules and regulations fixing the kind of accounting.

The CHAIRMAN. Senator, you may proceed if there are no further questions at the moment.

Mr. SMITH. I only wished to answer as fully as I could any questions the members of the committee might desire to ask.

Mr. WEBSTER. I want to ask Senator Smith a question, if it will not interrupt him.

Mr. SMITH. Not at all.

Mr. WEBSTER. I hope in the discussion of this legislation we will not assume that the Interstate Commerce Commission in applying this act will deny any relief under it. I am for this bill because I want to see a reduction in the mileage fares. If we assume here that according to its provisions the act is not unconstitutional, it seems to me that that will induce the Interstate Commerce Commission, when they come to act under it, to say that the only theory upon which this can be administered within the Constitution is to require the issuance of mileage books as a matter of convenience, but we will not reduce the far. I prefer to see the discussion proceed upon the assumption that the Interstate Commerce Commission is going to grant a reduced mileage rate.

Mr. SMITH. My reason for discussing the Lake Shore and Smith case was that I wished to present the view that if this bill even had required a reduction of the rate it would not be in conflict with the Lake Shore and Smith case as the Supreme Court has left it.

Mr. WEBSTER (interposing). There is just one other suggestion.

Mr. SMITH (continuing). Because I expect the Interstate Commerce Commission to reduce the rates.

Mr. WEBSTER. That is a frank, fair statement of it. That is what I expect them to do.

Mr. SMITH. And that is why I discussed so fully the constitutional right to make different rates for the wholesaling of tickets from the rates to an individual on a single trip.

Mr. WEBSTER. Mr. Chairman, I understand Mr. Mapes wants to ask a question along this same line, and I yield to him for the moment.

Mr. MAPES. The interstate commerce act seems to imply at least that such reduction in rates might be made for the issuance of interchangeable mileage books in classifying them with the commutation passenger tickets in section 22.

Mr. SMITH. Yes.

Mr. MAPES. And the Supreme Court has held, as I understand it, that reductions for commutation tickets are constitutional.

Mr. SMITH. Yes; I think so.

Mr. WEBSTER. There is one aspect of this bill that gives me more concern than the question of its constitutionality arising out of the Smith case. So far as my examination of the cases goes, in every instance where the Supreme Court has been called upon to review the decision in the Michigan case, it has either undertaken to distinguish and get away from it or has expressly overruled it. It has never been followed in a single instance up to this time.

Mr. SMITH. Yes.

Mr. WEBSTER. Now, concerning the question suggested by Mr. Sanders, if these interchangeable mileage books are issued, establishing a uniform rate, what would be the effect on a short-line road entitled under the law to charge more than the usual rate? I understood your answer—and I think I am in agreement with you about it—to be that under the provisions of the bill the Interstate Commerce Commission could deal with that situation by fix'ng a differential, so that the holder of the mileage book would have its interchangeable value, could use it upon the short-line roads, but would be required to pay a differential to compensate for the difference between the usual rate and the rate allowed on the short lines. Now, I notice the bill says this: "Before making any order requiring the issuance of any such tickets, the commission shall make and publish such reasonable rules and regulations for their issuance"—and I emphasize—"and use as in its judgment the public interest demands."

Now, the use that they may regulate is not confined to the question of whether these tickets shall be transferable or nontransferable, the question of the method of identification that shall be employed, or the question of the amount of baggage to be carried. That is not all that may be done. These things are specified in the bill, so that the power to regulate the use of the ticket contemplates doing the things enumerated and also some other things; and under that

power the commission could require the holder of the interchangeable book to pay a different rate, representing the difference between the cost of transportation on the short line and the trunk line. Do I correctly understand your view?

Mr. SMITH. That is my view of it.

Mr. WEBSTER. Yesterday Mr. Jones asked Commissioner Esch an interesting question. He said, "Suppose the holder of one of these interchangeable mileage books should initiate his travel at a point in Pennsylvania and terminate his travel at a point in Pennsylvania; would that book be recognized?" It seems to me that the commissioner's answer that it could not be so used is not correct. This bill, by its terms, relates not only to interstate transportation lines. Interstate transportation lines are agencies of interstate commerce, and can be regulated even though that regulation has to do with a purely State transaction, as was recently held in the Wisconsin Rate cases, decided by the Supreme Court a few days ago.

Mr. SMITH. Yes.

Mr. DENISON. Judge Webster, in that connection, the bill expressly says, "good for interstate carriage."

Mr. WEBSTER. I think the language of the bill in that respect is unfortunate, and I have a note here when we get to that phase of it.

Mr. SANDERS. Senator, I do not like to rehash the question that Judge Webster suggested, but I think it is extremely important, if we are going to write a law, that we should know just what it means. Whenever a statute makes certain specific provisions and then in a subsequent section there is a provision for regulation no regulation can in anywise change a specific provision made in the statute; that is, the specific provision in the statute would overrule any question of regulation.

Mr. SMITH. Yes.

Mr. SANDERS. The idea of regulation is to deal with the thing in line with the statute.

Mr. SMITH. Yes; effecting and carrying out the general provisions.

Mr. SANDERS. When we say in this statute specifically that each carrier by rail is required to issue the mileage ticket and that it must be not a just and reasonable rate but it must be a just and reasonable rate per mile, and then we say that that ticket must be good for passenger carriage upon any passenger trains, I do not see how we can say that the ticket is not good at so much per mile.

Mr. SMITH. Well, I recognize the fact that there is room for discussion upon that subject, and yet it seems to me that the ticket could be required to be accepted and in certain particular instances a differential allowed.

Mr. SANDERS. Then it would not be good. Where it required a differential, the ticket would not be good.

Mr. SMITH. It would be good for use but the differential would be added. It would be good subject to rules and regulations distinguishing certain particular lines for peculiar reasons.

Mr. SANDERS. Yes; but the act specifically provides that every carrier must issue them; that every carrier must accept them; that it must be good for carriage on a passenger train, and that it must be at so much per mile. Now, I do not think a subsequent provision for regulation—

Mr. SMITH (interposing). You do not think the provision for regulation is broad enough to cover it?

Mr. SANDERS. I do not think a subsequent provision for regulation would justify a regulation which says that the ticket is not good on a passenger train at so much per mile. I just wanted to emphasize that view of it.

Mr. JOHNSON. Senator, I am curious to know why the Lake Shore case has been relied upon in discussing this question. As I remember the Lake Shore case the State was divided up into zones, and for the upper peninsula they charged 2 cents a mile, and for the lower peninsula they charged 2½ cents a mile. There is no such question, so far as I have been able to see, involved in this bill.

Mr. SMITH. None at all.

Mr. JOHNSON. Why should that be discussed so much by the commissioner and why take so much time in answering it?

Mr. SMITH. It was discussed so seriously by your former chairman and relied upon so strongly by him that it seemed to me the one block he presented in the way of this legislation in his long discussion, I felt I ought to at least call attention to these other decisions, thinking perhaps some of you had not examined them all carefully, and thinking that perhaps it might be helpful

to you to show that the reliance of Mr. Esch upon that decision was improperly founded.

Mr. JOHNSON. That question is not involved in your bill here at all.

Mr. SMITH. Not at all.

Mr. JOHNSON. That is what prompted the question.

Mr. SMITH. Yes; not at all.

Mr. HUDDLESTON. Senator, is it contemplated by the advocates of this bill that these mileage tickets will be sold at the cost of the service plus a reasonable profit?

Mr. SMITH. Well, I can not say. The general rule as to all rates should be that they cover cost of service plus a reasonable profit, involving investment and cost of transportation. That is a broad question that is left to the Interstate Commerce Commission to regulate. It is the view of those for whom I appear that there ought to be a substantial reduction for the 1,000, 2,000, and 4,000 mile ticket below the ordinary rate.

Mr. HUDDLESTON. I will state my question with a reverse curve to it. Is it contemplated that the charge for the mileage books shall be an out-of-pocket charge to be made up by other sources of railroad revenue?

Mr. SMITH. I do not think so; no.

Mr. HUDDLESTON. Then, is it your idea that those who want this legislation and who expect to get these tickets expect to pay their own way on the trains?

Mr. SMITH. Oh, yes.

Mr. HUDDLESTON. And do not expect to ride for less than the cost of the service they receive and have somebody else pay the difference?

Mr. SMITH. I should say so, but if I were myself fixing a rate for commercial travelers alone I would recognize that they occupy a status entirely different from the public. I would recognize the fact that they stood between the average public and the railroad employee who travels free; that they did almost as much for the railroads as they did for their own employers; that they build up the freight traffic that the railroads haul; and that they were almost entitled to recognition as being semiemployees of the transportation companies themselves. I think that the commercial traveler can do more for the railroads than any other man in the community except its own employees, and I believe they build commerce and that they will be of immense service to the whole country to-day in restoring normal conditions, and that anything we can do to encourage them to travel and to activity helps every line of occupation.

Mr. HUDDLESTON. So that to give commercial travelers, specifically, a direct benefit by this legislation will, in the opinion of the advocates of the bill, result in an indirect benefit to the general public?

Mr. SMITH. I think so.

Mr. HUDDLESTON. Of course, Senator, as a very experienced legislator, although you do not happen now to be one, and one whose absence is very greatly missed—

Mr. SMITH. Thank you, sir.

Mr. HUDDLESTON (continuing). You realize that that very argument which you present is the plea presented in behalf of every piece of special-interest legislation pressed upon Congress?

Mr. SMITH. Yes.

Mr. HUDDLESTON. Always the argument is, Do this primarily for us and we will pass the benefit on to somebody else.

Mr. SMITH. And therefore it was determined not to limit this bill to commercial travelers but to make it broad so that the commercial travelers under the bill would carry their part of the expense without special concessions, except as an incident to the fact that it was a wholesaling of transportation and that the transportation was interchangeable and a convenience.

Mr. HUDDLESTON. So that part of its expected benefit will go to a class of people who are not commercial travelers?

Mr. SMITH. It goes to the public at large.

Mr. HUDDLESTON. And not alone to commercial travelers in whose activities the general traveling public is claimed to have an interest?

Mr. SMITH. Yes.

Mr. HUDDLESTON. So that such persons will be able to ride for less than the cost of the service they receive?

Mr. SMITH. No.

Mr. HUDDLESTON. That deficit to be made up out of a charge against the general public?

Mr. SMITH. No; I do not think they will be allowed to ride for less than the cost of service that they receive. I think—

Mr. HUDDLESTON. (interposing). My whole line of questions is postulated upon your argument that the traveling salesmen were to pay less than the cost of the transportation which they receive. You argued that they are entitled to something without paying for it.

Mr. SMITH. I went on to say I thought it would be beneficial to the public to make a special concession to traveling men in rates, but this bill applies to all of the public and therefore that special concession is not involved here at all.

Mr. HUDDLESTON. Your argument in behalf of that special concession does not apply to the persons who will derive benefits from this bill who are not commercial travelers?

Mr. SMITH. No; and I believe the railroads themselves will derive a benefit from it. I believe the increased transportation, as a result of the holding of 1,000 or 2,000 mile tickets or 3,000 mile tickets will enormously increase the travel needed now to furnish revenue to the railroads. We all know that a man who has a ticket already in his pocket will travel when otherwise he would not, and he will travel farther, and he will travel oftener, and the increased travel to the railroads will more than make up to them any loss whatever from the reduction accorded them.

Mr. DENISON. Senator, along that same line of reasoning, then, what would you think of the proposition of saying to a coal company, "If you will take more than 1,000 cars you may have it at a less rate?"

Mr. SMITH. Well, I am opposed to that.

Mr. DENISON. Why?

Mr. SMITH. Because I do not believe in fostering the big enterprise at the expense of the small one in freight transportation and in industry.

Mr. DENISON. But the same reason you gave just a moment ago applies, that it would increase the business of the railroads.

Mr. SMITH. No; I do not think so.

Mr. DENISON. What is the difference in principle?

Mr. SMITH. I think the small one, given a reasonable rate, will ship his goods and more of them and increase his business, just as much as the big one would.

Mr. DENISON. You say you do not believe in giving a benefit to the big industries?

Mr. SMITH. As against the small ones.

Mr. DENISON. Let me ask you if you are not doing that by this bill?

Mr. SMITH. No.

Mr. DENISON. The traveling salesman is not traveling for himself. He represents a big concern.

Mr. SMITH. Yes.

Mr. DENISON. And the big concern gets a cheap rate and you and I or any poor individual has to pay the regular fare.

Mr. SMITH. Well, take the case of the street car tickets. I am reminded of a story told by John Allen, of Mississippi. He met Mr. Dingley, of Maine, and told Mr. Dingley that he had just had an opportunity for an investment on which he could have made in less than a week 20 per cent. Mr. Dingley said, "Why didn't you make it?" "Well," he said, "I just did not have the funds." "Well," replied Mr. Dingley, "why didn't you let some of your friends know it. Do you know you could have made 20 per cent in a week?" "Yes." "Why didn't you let some of your friends know about it?" And finally Mr. Dingley said, "What was it?" "Well," he said, "I was taking the street car this morning, and I could have bought six tickets for a quarter and I did not have the quarter, and so I paid 5 cents for one, and if I just had that quarter I could have made 20 per cent on it inside of a week."

Now, I do not think there is any real trouble in that respect so far as this ticket is concerned. Just as in the case of the street cars all over the country, which are required to sell a number of tickets for less than the ordinary ticket, I think the economy of sale, the simplicity of the sale, the whole plan, is not a discrimination against the small man, but it helps take care of the business and carries its burden, just as much as the small man carries his.

Mr. WEBSTER. Senator Smith, is there not a vast difference between passenger travel and freight shipments arising out of this situation: The passenger train must run. It must run on schedule, whether its coaches are full, half full, or empty, and the cost of transporting the train from point to point is practically the same whether the coaches are empty, half full, or quite full?

Mr. SMITH. I think so; yes, certainly.

Mr. WEBSTER. So that if the use of these interchangeable mileage books will increase and stimulate passenger travel the cost of carrying the train will be practically the same and the revenues to the railroad will be increased?

Mr. SMITH. Yes. Now, Mr. Chairman, I would like to say just a few words about the second proposition of Mr. Esch.

Mr. RAYBURN. Senator, I should like to ask you a question before you take that up.

Mr. SMITH. All right; I just want the committee to realize I am complying with their wishes and am not taking their time, other than as indicated by the desire of the members of the committee to ask me questions, which, of course, I am glad to answer.

Mr. RAYBURN. We control the time.

Mr. SMITH. Yes.

Mr. RAYBURN. What percentage of the traveling men pay their own fare?

Mr. SMITH. I do not know.

Mr. RAYBURN. Have you any idea?

Mr. SMITH. No; I have not. I am told from my left, 50 per cent. It is suggested to me by an officer of the association that it is 50 per cent.

Mr. BARKLEY. In other words, 50 per cent of them travel on commission and pay their railroad fare as a part of their expenses and the other 50 per cent have their expenses all paid by the house which they represent.

Mr. SMITH. So I understand.

Mr. BARKLEY. The man who buys the goods pays it, anyway.

Mr. SMITH. The man who buys the goods finally pays it, but the commercial traveler must take the risk of selling.

Mr. HAWES. Senator, the original desire of the proponents of this bill was to secure a return to the old system of mileage tickets, accompanied by the belief which they had at that time, that Congress could fix a certain rate. The discussions in the Senate clearly established the fact that Congress can not go into the rate-fixing business any more than it can regulate the price of corn or the price of hogs or the price of wheat.

Mr. SMITH. Yes.

Mr. HAWES. So that in effect this bill does but one thing. In my opinion it is constitutional and would stand the test. The Interstate Commerce Commission to-day has the power to do this thing without an act of Congress, but this act directs the attention of the Interstate Commerce Commission to a desire that they shall proceed and are directed to proceed to issue mileage tickets, under regulations to be made by the commission, after hearing. There is nothing in this act, however, which compels the commission to lower the rate. There is nothing in this act that would prevent the commission, under certain circumstances, from even raising the rate; but it does this: It directs them to take up this subject and to issue mileage tickets. That is the only thing that it does. Their authority is then limited to a just and reasonable rate per mile.

Mr. SMITH. Yes.

Mr. HAWES. So that in considering a just and reasonable rate per mile, they will consider the cost of travel in a mountainous country, crossing rivers, bridges, etc., and it does not follow that the railroad company will be compelled to issue them, under any rule that the commission might provide, at 2½ cents or 2 cents or any other rate; but the object of the bill is to express to the Interstate Commerce Commission the wish of Congress, first, that an interchangeable mileage book be issued, leaving to the commission the same discretion, which it has in freight rates and which it has to-day in passenger rates, and that is all this bill does.

Mr. SMITH. Yes. I fully agree with all the latter part of the statement of the gentleman.

Mr. LEA. Senator, do you construe this bill if enacted as conferring any power on the commission which it does not possess to-day?

Mr. SMITH. No; I do not. I think it has the power already, but it is directed to exercise that power.

Mr. HAWES. And that is all it does. It directs them to exercise the power.

Mr. SMITH. It directs them to proceed to exercise a power they already have.

Mr. LEA. There is another question I would like to ask you. Do you know whether there are any statistics available that show the percentage of mileage tickets that were lost under the old system?

Mr. SMITH. I do not know. I have not looked into that.

The CHAIRMAN. Senator, do you think the active flow of the business of the country is being interrupted now because of the absence of such mileage-book facilities as are proposed under this bill?

Mr. SMITH. I have had expressions from a number of leading business men in New York who are very anxious for this kind of ticket to be issued, as they seem to think it will just be a step to help stimulate business all over the country.

The CHAIRMAN. Yes; but I was asking you, however, if you are willing to state, based on any inquiry you have made, perhaps—

Mr. SMITH. Based upon my inquiry, I believe that this action by Congress will help, perhaps psychologically as much as any other way, but it will help to stimulate business.

The CHAIRMAN. Would you feel warranted in saying that, in your judgment or in the judgment of anyone whom you might quote or any organization, that business was actually being retarded in this country now in consequence of the absence of such a ticket privilege?

Mr. SMITH. It is the opinion of many of these traveling men with whom I have talked that they are not traveling as much and not doing as much for a lack of something of this kind.

The CHAIRMAN. Well, I presume that is true—that they are not traveling as much.

Mr. SMITH. And that they will travel more.

The CHAIRMAN. And the query is whether they are not traveling as much because of the absence of this ticket privilege.

Mr. SMITH. Yes; they think they will travel more with this kind of ticket and do more business with it.

The CHAIRMAN. Now, can you go a little further and indicate whether the lack of flow of trade is due to any state of mind of the buyer, or, on the other hand, is it due to the state of mind of the seller who will not send his men out on account of the excessive fare?

Mr. SMITH. I think that is affecting it somewhat.

The CHAIRMAN. Which, one or both?

Mr. SMITH. Well, I would say that the excessive fare is checking the sending out of the traveling men, and I think the traveling men's presence in the communities helps affect the state of mind of the buyers and increases our domestic commerce.

The CHAIRMAN. That is the psychology, maybe?

Mr. SMITH. Yes.

The CHAIRMAN. I wanted to get a little nearer the economics of it all. Would you feel that any seller of goods or any producer of goods would let an order go by him if he could get it at a distance, even at the present rate of fare?

Mr. SMITH. No; but he does not seek the orders as actively as he otherwise would, and I believe that the entire business will be increased by it, and I believe the business of the railroads will be increased by it. I think people are not traveling because they think they are charged too much. I think there is less being made to-day by the railroads on account of present passenger rates than they would make if they would take off something. I believe that there would be more travel and more money made by the railroads if railroad transportation was less than it is to-day.

The CHAIRMAN. Would you feel that employers of salesmen who are not now on the road—referring to the salesmen—would forthwith be brought into commission and sent out if a bill like this were passed?

Mr. SMITH. I think that the travel would be increased. That is as far as I feel justified in going.

The CHAIRMAN. I can appreciate your feeling, Senator, but have you anyone here in connection with your presentation who, on any sort of statement other than a statement of the psychology of the case, could demonstrate whether or not there is anything concrete in the suggestion that business is being retarded because of the absence of these tickets.

Mr. SMITH. The counsel for the traveling men of New York will address you a little later, who is more familiar with the entire situation than I am. I speak with no more knowledge than any one of you further than I have studied this particular bill somewhat and have long believed in the general good accomplished by the commercial traveler.

The CHAIRMAN. I can appreciate that, Senator. I simply thought that if you had had that presented to you you might give it to the committee.

Mr. WEBSTER. Of course we all know that it is impossible in many instances to base our opinions as to the effect of contemplated legislation upon past

experience. That is necessarily true when we are changing the law, but is not this the fact: That a large percentage of passenger traffic is so-called voluntary travel, where people may either go or remain at home as they please, whereas freight must move; some characters of it must move or go to waste. This movement is largely involuntary. To reduce passenger fares will stimulate travel, and inasmuch as a large portion of it is voluntary would naturally have the effect of increasing the revenues of the roads, would it not?

Mr. SMITH. Undoubtedly.

Mr. NEWTON. Senator, may I interrupt right there? A merchant who is engaged in selling through traveling salesmen, of course, has to figure in his overhead the expense of sending his men out on the road. If the men are on commission, of course, they must take their own chances upon their trips. In either event the expense of sending a man from the house out on the road is an expense of selling the goods.

Mr. SMITH. Yes.

Mr. NEWTON. It is speculative.

Mr. SMITH. Yes.

Mr. NEWTON. When the man leaves with his sample case he does not know whether he is going to get an order or not.

Mr. SMITH. No.

Mr. NEWTON. Now, if the selling expense is great the less he is going to travel, because the more he is going to lose if he does not get an order. If you reduce the overhead and reduce the selling expense you lessen the amount of speculation, and it seems to me it would certainly have the effect of stimulating business.

Mr. SMITH. Yes. Just one word, gentlemen, about the second constitutional argument of Mr. Esch, if it can be dignified by the name of constitutional argument. I do not know whether he describes it as that himself. It was the suggestion that this bill would force contracts between railroads. I am unable to see exactly what he predicated that view upon. A railroad in New York City sells a through ticket to San Francisco. What does that mean? It means that it has sold a ticket that is good over every road from here to San Francisco. It means that at the end of the month they balance up. A road in San Francisco may have sold a ticket to New York, or in between these points a ticket may have been sold in interstate commerce to New York, or one to San Francisco. That is a necessary part of the business of transportation. Freight is shipped in interstate commerce. The railroad accepting the freight usually collects the freight in advance and holds it for the other road that carries it when they connect up with it.

Mr. HOCH. Right on that point may I interrupt you, Senator? Is it your contention that railroads at present sell tickets for long journeys to be good over roads with which they have no contractual relation?

Mr. SMITH. Whether they have contractual relations or not, they can be made to do it. The power over interstate commerce vests this power in Congress and through you in the commission, and you have the right to make the railroads do it. Suppose a railroad in New York undertook to say, "We will sell a ticket to a certain point, but although you are going to St. Louis or Chicago we will not sell beyond an intermediate point." You would have to get out at that station and buy another ticket as the train passed through. Transportation would be impossible. Interstate transportation without the recognition of the responsibility of one railroad connecting with another to carry their freight or passengers on the order of the initiating company would be impossible, and the power over interstate commerce vested in Congress and in the commission is broad enough to compel the sale of interstate tickets, and in freight matters it is done every day.

Mr. BARKLEY. And is compelled, is it not?

Mr. SMITH. Yes; they are compelled to do that. State after State has passed acts forcing railroads to accept freight offered by other roads and has forced them to carry it in transportation, and all such legislation has been recognized as constitutional, and never has any such provisions been set aside. So that the whole system of transportation already has established the right and the power of the Government to compel the interchange of business and the settling up by the initial company for what it owes, as a result, to all the other railroads, and this in no way varies from what is already the established rule under the power in the Interstate Commerce Commission. It is a power that has been recognized by the States and exercised by the Interstate Commerce Commission over and over again.

Mr. GRAHAM. The commissioner finally admitted that, did he not?

Mr. SMITH. I thought he did. I thank you, gentlemen. Unless some one wishes to ask me further questions, I have nothing further to submit. I have taken very much more time than I had expected, but I think the committee will bear me out in saying that I have tried to answer your questions.

The CHAIRMAN. We are very much obliged to you.

STATEMENT OF MR. SAMUEL BLUMBERG, COUNSEL FOR THE NATIONAL COUNCIL OF TRAVELING SALESMEN'S ASSOCIATION, 200 FIFTH AVENUE, NEW YORK.

The CHAIRMAN. Will Mr. Blumberg kindly proceed with a further statement for the same organization, and will you kindly enter for the record a list of the constituents of your general organization?

Mr. BLUMBERG. I am filing first, Mr. Chairman, a list of the gentlemen—

The CHAIRMAN (interposing). Will you, first of all, give your name?

Mr. BLUMBERG. Samuel Blumberg, 200 Fifth Avenue, New York.

The CHAIRMAN. Representing?

Mr. BLUMBERG. Representing the National Council of Traveling Salesmen's Associations.

I should like first, Mr. Chairman, to file a list of the gentlemen who were here yesterday as representing their constituent organizations and with respect to the associations I represent. I should like the privilege of filing a short memorandum, on the first page of which appears a list of these different associations, which follows:

MEMORANDUM OF NATIONAL COUNCIL OF TRAVELING SALESMEN'S ASSOCIATIONS, IN CONNECTION WITH MILEAGE-BOOK LEGISLATION.

The National Council of Traveling Salesmen's Associations are vitally interested in the legislation now pending before your committee regarding interchangeable mileage books. The national council comprises the following constituent organizations: Associated Traveling Salesmen of New York; Associated Chicago Salesmen; Associated Millinery Men; Association of Corset Salesmen's Clubs; Boston Shoe Travelers' Association; Boot and Shoe Travelers' Association; Carpet Association of America; Carpet and Upholstery Club of Chicago; Cleveland Garment Salesmen's Association; Commercial Travelers' Lace and Embroidery; Eastern and Middle West Travelers' Association; Far Western Travelers' Association (Inc.); Garment Salesmen's Association (Inc.); Jewelry, Leather, and Fancy Goods Salesmen's Association; Men's Apparel Club of State of New York (Inc.); Men's Apparel Club of Pennsylvania (Inc.); Men's Apparel Club of Illinois; National Association of Knit Goods Selling Agents; National Piano Travelers' Association; Rochester Association of Traveling Shoe Salesmen; Silk Travelers' Association (Inc.); Southern Jewelry Travelers' Association; Southern Travelers' Association (Inc.); Southern Shoe Salesmen's Association; Tobacco Salesmen's Association; Upholstery Association of America (Inc.); Wall-Paper Travelers' Association.

For some period of time prior to the introduction of bills in the United States Senate and in the House of Representatives the council endeavored to have such mileage books issued by the carriers of the country through the intervention of the Interstate Commerce Commission, and was informed that the commission was powerless to order the issuance of these books. I quote from the report of the commission:

"The commission has held in various decisions that while section 22 of the act provides that 'nothing in this act shall prevent * * * the issuance of mileage, excursion, or commutation passenger tickets,' this language is merely permissive and does not give authority to the commission to compel the carriers to furnish passenger transportation at less than the reasonable normal fares. (*Eschner v. P. R. R. Co.*, 18 I. C. C. 60; *In Re Mileage Books*, 28 I. C. C. 318.)"

In *Field v. So. Ry. Co.* (13 I. C. C. 298) the commission said:

"The commission is without power to require carriers to establish special fares based on less than normal passenger-mile revenue for the use of passengers on particular occasions or for special purposes."

From the foregoing, therefore, it was obvious that the commission was without power to take the action desired. Believing, as the council did, that the issuance of these books was necessary in order that the expenses of traveling might

the author's name is not mentioned in the title page, it is likely that he is the author of the book.

Taking into consideration the fact that there are thousands of unemployed, we believe normal conditions will be more readily restored by a lowering of passenger rates, since the information brought to us from those large industries that have abandoned and curtailed their selling forces, that under a moderation of cost, they would increase and extend their selling forces and their efforts and we contend that as a natural sequence, there will be a greater stimulus and a greater demand for merchandise, all of which will better business conditions and benefit the country as a whole.

By reason of all of the foregoing, we strongly urge that this committee report favorably, as soon as possible, legislation similar to that passed by the United States Senate, so that it may be brought before the Congress of the United States for immediate disposition.

Respectfully submitted.

SAMUEL BLUMBERG,

General counsel, National Council of Traveling Salesmen's Associations.

The National Council of Traveling Salesmen's Association, S. Blumberg, counsel; L. S. Fox, chairman, transportation and legislative committee; and H. L. Schamberg, managing director.

Far Western Travelers' Association (Inc.), G. W. Furey, president, and J. L. Wilzin, counsel.

Garment Salesmen's Association (Inc.), D. B. Calder.

Associated Traveling Salesmen of New York, A. E. Foise and G. Lebolt.

Southern Travelers' Association (Inc.), M. Grossman.

Associated Millinery Men, Charles Fischer, counsel.

Men's Apparel Club of New York (Inc.), C. F. Brickner.

Silk Travelers' Association (Inc.), William Rusch.

Commercial Travelers of the Lace and Embroidery Allied Trades, Irving Schaele.

Men's Apparel Club of Pennsylvania (Inc.), L. E. Hess, president, and M. Herrman.

National Piano Travelers' Association, Albert Behning.

Boot and Shoe Travelers' Association, P. J. Watson.

The subject, gentlemen, has been covered so thoroughly by Mr. Smith that there are but a few points that I would like to mention at this time.

Using the statement of Mr. Hawes, where he says that after all this bill does nothing more than to direct the commission to exercise its authority, the salesmen long before any legislation was requested went to the commission and suggested to the commission the advisability of having a book issued, an interchangeable mileage book good on all roads. They tried to urge upon the commission the necessity for issuing this book, with a view of suggesting that it would stimulate business, and the commission concluded that it had no authority to issue any interchangeable mileage book. The commission in a communication to me said as follows:

"The commission has held in various decisions that while section 22 of the act provides that 'nothing in this act shall prevent,' etc., the issuance of mileage, excursion or commutation passenger tickets, this language is merely permissive and does not give authority to the commission to compel the carriers to furnish passenger transportation at less than the reasonable, normal fares."

And they cite the case of *Eshner v. The Pennsylvania Railroad Co.*, reported in 18 I. C. C., page 60, and the hearing in re mileage books at 28 I. C. C., at 318.

In that letter the commission goes further and says this:

"In *Field v. The Southern Railroad Company* the commission said: 'It is without power to require carriers to establish special fares based on less than the normal passenger mile revenue for the use of passengers on particular occasions or for special purposes.'"

Mr. GRAHAM. Where do they hold that?

Mr. BLUMBERG. That is in 13 I. C. C. 298. That is taken from a copy of the letter sent to me under date of August 23, 1920, and signed by the acting secretary. So when this communication—

Mr. DENISON (interposing). Of course, you understand that the commissioners meant they did not understand that they had the constitutional power?

Mr. BLUMBERG. Well, they felt, as I gather it from this communication, that the act to regulate commerce did not vest in that body power to direct the roads to do something; that it was merely something they could suggest to the railroads and if the roads wished to issue this book, why, they could do so, at which time upon the filing of the tariff the commission could conclude

whether that tariff was reasonable, but it could not of itself initiate or direct the issuance of this book.

Mr. DENISON. That was in conformity with the commissioner's statement yesterday, that they felt they did not have the constitutional power to make them do so.

Mr. BLUMBERG. Yes, sir.

Mr. SANDERS. The statutory power.

Mr. BLUMBERG. I say that at the outset, because that raises the question of whether under the act to regulate commerce the commission had not the power, but so long as that body concluded that it had no power to direct the roads to issue a book we were left with no alternative but to come to Congress and ask Congress to enact appropriate legislation that would direct the commission to authorize—or, rather, to order—the roads to issue a book.

Mr. GRAHAM. As I understand you, then, none of the carriers has ever manifested any indication that they desired to issue interchangeable mileage?

Mr. BLUMBERG. Of course, they have issued many mileage books, some of them good on several roads, but so far as I know from conferences that have been attempted, the railroads have never mentioned a desire voluntarily to issue an interchangeable mileage book good on all roads.

Mr. GRAHAM. Is there an interchangeable mileage book to be had now on any road?

Mr. BLUMBERG. I do not know whether there are any interchangeable mileage books. There are certain special scrip books in use to-day—that is, the rate is the same.

Mr. GRAHAM. The rate is the same as the regular rate, and are several roads included in those books?

Mr. BLUMBERG. Well, the scrip book is good on all roads, is it not?

The CHAIRMAN. They had a universal book, full of little bits of coupons, good for 3 cents each.

Mr. NEWTON. Is it good universally?

The CHAIRMAN. I think it supersedes the continuous use of scrip during the period of Federal control of railroads.

Mr. GRAHAM. That is simply an argument for the convenience of it.

The CHAIRMAN. The convenience of having the scrip in your pocket.

Mr. BLUMBERG. As we understand it, these mileage books stopped when Federal control took over the roads, and we are now trying to reinstate the situation that existed at that time.

Mr. GRAHAM. Did your association ever try—did you ever take up with the railroads the issuing of such books? Did you ever have any conferences with them or try to do anything along that line?

Mr. BLUMBERG. No; we tried by presenting the matter to the commissioners, asking that they endeavor to present the thought to the various associations of trunk lines or executive managers, with a view of trying to have a conference that might result in something concrete, but it never got anywhere.

Mr. GRAHAM. I am curious to know why your association has not endeavored to deal directly with the carriers in some instances. I judge from what you say you have rather tried to have public-utility bodies perform that function, but why have you not yourself taken it up with them, so that you could tell what their idea is about it?

Mr. BLUMBERG. Perhaps the best answer to that would be that if an examination were made of the very many hearings that have taken place before these public bodies where the rights of the salesmen on the one hand and the rights of the railroads on the other were involved, one might read out of that record a determination that perhaps these conferences would be useless. In other words, we reached the conclusion—

Mr. NEWTON (interposing). I notice from the Senate hearings upon the mileage book bill that there is a copy of a letter bearing date August 28, 1920, to Mr. C. A. Fox, chairman of the Central Passenger Association, district of Chicago, Ill., and signed by James R. Crawford, national chairman of the railroad committee of the Travelers Protective Association. Now, I have not read the letter, but I gather from just a hurried glance at it that the suggestion was made in the letter that these interchangeable mileage books be issued. In any event Mr. Fox appeared before the Senate committee as representing the Central Passenger Association and, apparently speaking for the railroads, opposed the idea of going back to the issuance of interchangeable mileage books as we understood those before we entered the war.

Mr. BLUMBERG. Yes. Now to proceed on that thought, when the question came up as to whether this bill as introduced in the Senate should contain a provision that would fix a rate, it gave rise to a great deal of discussion. It would be immaterial, it seems to me at this time, to discuss the question as to whether the Senate should have passed a bill fixing a definite rate, because the thought of the proponents of the bill was to endeavor to bring about this legislation as quickly as possible, to do one thing: In other words, to put us in a position where we could go to the commission and say: "Now, we want a book. You are authorized to direct" or, rather, "You are directed to request the roads to issue it, and we don't want that book if it can't be issued on a fair and reasonable rate, and we don't want the book if after a proper and exhaustive investigation it is concluded that this book is not in the interest of business generally and is not done for the purpose of fostering business. We believe it is." And we wanted to put that body in a position where it would act.

Now, of course, it may be that the commission may conclude—or perhaps the roads on being directed to issue a book will issue a book at the same rate. It will then put the commission in a position to inquire into its reasonableness—at least it will initiate the machinery which at this time we can not initiate.

Of course, if the roads do take that position, perhaps we will have to contend with them at that time; but in any event we say to you gentlemen that the bill having originated in the Senate and these Senators, in their judgment, with long and vast experience, having concluded that after all what we needed was the direction to the commission, and having taken out of that bill the provision with respect to this rate, and having passed on to the body the bill in that form, we urge upon you that the bill be passed in that form; that is to say, eliminating the rate, although it is true that it would be serving no useful purpose if the legislation were passed, as some of the proponents contend, unless a rate were established. But my answer to that is just as I said before: We want to be placed in the position which we think we were before this legislation was enacted; that the Interstate Commerce Commission had power to initiate of its own motion the right to order the issuance of this book, but they, having side-stepped it or having determined that they had no constitutional authority, we want it vested in them.

So that to my mind covers the long discussion that started here yesterday by Commissioner Esch with respect to the constitutionality of the bill now before you. Surely if you eliminate the rate and you take the bill as coming to you from the Senate, there can be no question as to its constitutionality. The very decision which Commissioner Esch quoted stated very plainly that one of the serious difficulties in that Smith case was that the statute intended to fix the rate in one section of the State at $2\frac{1}{2}$ cents and in another section at 2 cents. But that is not before this body. Mr. Hoch asked yesterday of Mr. Esch: "What is there about this bill that you say is unconstitutional? Do you think that the issuance of a mileage book is unconstitutional—the book itself is unconstitutional—or do you say it is the rate at which it will be issued?"

As I recall it, Commissioner Esch said there was an implied thought in this bill that if it were passed it would presuppose the issuance of a book at a lesser rate. We are not concerned with conjecture. We are not concerned with what might transpire. If we are arguing the constitutional question, the question before us is, Is this bill, in the light of the decision in the Smith case, even if it were law—is this bill unconstitutional? And I say to you, gentlemen, that if the question of the rate is eliminated there is nothing in the Smith case that could indicate in any manner or form that this particular bill is unconstitutional.

And so, quoting Mr. Johnson's statement, I think all of this talk with respect to this bill in the form in which it is drawn, concerning its constitutionality, is entirely beside the question.

Mr. DENISON. I have this thought in mind: That if this bill did fix the rate and if it would be unconstitutional for us to pass a bill which would fix the rate, then it would be just as unconstitutional for us to pass a bill which would give somebody else the power to fix that rate.

Mr. BLUMBERG. Of course, I must answer that question by restating it.

I do not say that a bill passed by the House fixing a rate would make that bill unconstitutional, even in the light of the Smith case; but I say this to you: That if the commission has power to order a book at such rates as may in the judgment of the commission be deemed reasonable, and will compel the roads to initiate the rates and then to suspend, if you like, and investigate the rate, that there is nothing about that that would make it unconstitutional. Has not

the commission the power to fix rates? Has not the commission power to review the rates that may be fixed by the roads, and would not the road be compelled under this legislation to issue a mileage book? And the rate that they would determine to fix would be subject to the jurisdiction of the commission.

Mr. BURROUGHS. Mr. Blumberg, in other words, your position is that while it might be possible for the Interstate Commerce Commission to fix a rate that the court would not oppose, yet it is not to be presumed that the Interstate Commerce Commission will fix any such rate as that?

Do you get my point?

Mr. BLUMBERG. I do not think I do, Mr. Burroughs.

Mr. BURROUGHS. If I understand you rightly, you would not contend that the Interstate Commerce Commission might not fix a rate on these books that would not be upheld in court?

Mr. BLUMBERG. No.

Mr. BURROUGHS. You would not make that contention?

Mr. BLUMBERG. Certainly not.

Mr. BURROUGHS. But your contention is that we should not assume here that the Interstate Commerce Commission is going to fix a rate that will contravene any provision of the Constitution of the United States?

Mr. BLUMBERG. Exactly. In other words, I say if you have allowed the rate-making power to vest in the commission—if that is why Congress created that body—I am of the opinion that it is logical to leave to that body, because of the staff that they have, the figures that they have at hand, the statisticians, the tremendous amount of data that they are, by virtue of their position, in a better position to determine the rate that should be prescribed than anyone else.

Mr. DENISON. For the same reason, then, are they not in a better position to determine whether this ought to be done than we are?

Mr. BLUMBERG. I do not think so. I think we all have a right to say how to interpret the act to regulate commerce; and if the act to regulate commerce does not say so in so many words, that the commission has authority to issue a book; if that is not in the statute, Congress certainly has power to read into the statute what the duties and what the functions and powers of that body should be. It was created by you, and you have a right to say what its powers are.

Mr. DENISON. Yes; but you were stating, Mr. Blumberg, that you thought they were in a position to know what the rate ought to be better than we are.

Mr. BLUMBERG. Yes.

Mr. DENISON. Now, then, have they not already done so? Are they not in a position to say whether or not there ought to be any special rate made to those who buy transportation, who buy at wholesale? In view of all the conditions, are they not in a better position to judge that than we are?

Mr. BLUMBERG. They have not said yet, so far as I know, that they would refuse to issue a mileage book. They have simply said to us that they are without power to issue a mileage book. They have not said to us at what rate they would issue a book if they could. That is our position. Now, what I want to do is to have Congress tell them that they have a right to order a book to be issued.

Mr. DENISON. I understand they say they are without power. They do not say they are without legislative power; they say they are without constitutional power. Now, if they are without constitutional power, why, we are, too. That is their position.

Mr. BLUMBERG. I do not say that they are without constitutional power; I say that the act to regulate commerce, using their language, does not vest in them certain specific duties, which, incidentally, I may say it does.

Mr. DENISON. I think you misunderstood their position, if you will pardon me. I think when they said in their letter to you that they construed they did not have the power to make the railroads do it, they meant they did not have the power under the Constitution to make them do it.

Mr. BLUMBERG. I think the letter, as I read it, is plain. They say:

"The commission has held in various decisions that section 22 of the act to regulate commerce provides that nothing in this act shall prevent"—and then a stop—"the issuance of mileage, excursion, or commutation passenger tickets. This language is merely permissive and does not give authority to the commission to compel the carriers."

Now, I say that merely is a matter of interpretation of the act to regulate commerce, an act created by this body, and there are many who contend that the commission has power under that section to do precisely what we ask them

to do. Now, I say that you do not raise the constitutional question when you say to the commission, "You have power to order the roads to issue a mileage book."

Mr. HOCH. Mr. Chairman, one suggestion that is somewhat incidental to what Commissioner Esch said yesterday, to which no reference has been made this morning. He referred to the fact that there were a number of carriers in the country subject to the interstate commerce act that do not do any passenger business.

What have you to say with reference to the specific provisions of this bill which require tickets to be issued and to be honored by every carrier subject to this act? Would that make it possible for a man holding one of these tickets to demand the right to ride upon a freight train that does not accept passengers ordinarily at all?

Mr. BLUMBERG. I think the commission has very definitely determined what constitutes passenger traffic, what constitutes freight traffic, and what will be included in each; and I think that under the bill as drafted the commission has power in issuing this book, in ordering it to be issued, to determine and to make it subject to certain fixed regulations.

Mr. HOCH. There is no question of what the purpose was; I am talking about the specific language of this bill. Line 13 provides "That these tickets shall be good for carriage upon the passenger trains of any and all other carriers by rail subject to this act."

Of course it may be that if they are not passenger trains there may be saving words there.

Mr. BLUMBERG. Yes. Now, there was another point, if I may proceed, Mr. Chairman, that I was quite anxious to cover.

Mr. HAWES. May I ask one question? Can you not assume a situation where the commission would actually raise the rate?

Mr. BLUMBERG. Yes; they might say, if you please, that because of the added service they are giving, to give the added comfort, you mean, that they will charge more money for it?

Mr. HAWES. They might take the position that an interchangeable mileage ticket was an expense to the railroads, and for that reason it should cost more money than the ordinary ticket.

Mr. BLUMBERG. They might.

Mr. HAWES. It is entirely a matter of discretion.

Mr. BLUMBERG. That is precisely what I intended to say to Mr. Denison.

Mr. SANDERS. You hope they do not?

Mr. BLUMBERG. I hope they do not. Let me proceed to another thought.

Commissioner Esch yesterday made the statement that a very peculiar situation would arise if this mileage book were issued. He said you would find two men on the train, one paying 2.6 cents a mile and the other man paying the normal passenger fare, and he thought that that was discriminatory. Well, of course, he knows that before the roads were taken over there were numerous mileage books issued and that situation existed and that every commercial traveler carried in his bag five or six or seven mileage books; and merely because some tourist or some person making a journey did not carry that book or did not take advantage of the particular mileage book he could have bought, did not create any discriminatory legislation. And I wanted to call to the attention of this body this situation, that there are all-year-round tourist tickets sold, beginning at Chicago, upon a route beginning at that city, thence to Minneapolis, from there to Butte, thence to Seattle, to Sacramento, to San Francisco, to Los Angeles, El Paso, New Orleans, to Memphis, and back to Chicago, a total distance of 6,719 miles, and I am told that the total cost is \$162.39. Is that in use now?

Mr. HERBERT SCHAMBERG. Yes.

Mr. BLUMBERG. That is now in use. So that certainly must be known to the commissioner.

There is another thought that I would like to present in answer to the chairman's question. The national council sent out a questionnaire to a number of very leading commercial institutions for the purpose of finding out, first, the number of salesmen employed by these particular firms; second, the number of trunks that they carried—we had in mind hearings that were pending before various public service commissions—third, the amount of traveling done by these men during fixed periods; whether the salesmen increased their travel or whether they decreased it.

We put to them the very plain question whether they had been compelled because of the added expense to reduce or to curtail their traveling. And I am

told—and this, I am told, runs for the years 1917, 1918, 1919, 1920, and 1921—that we have a number of answers from very large institutions, and I assume those questionnaires could be filed, or copies of them, with this committee?

Mr. HERBERT SCHAMBERG. Yes.

The CHAIRMAN. You will do that, will you?

Mr. BLUMBERG. Yes. They will show that there are a number of firms of standing who say plainly that they have been compelled to curtail their traveling because of the enormous expense. There are others—

The CHAIRMAN (interposing). Pardon an interruption. I did not mean at any time to raise that question. It is self-evident. Everybody knows that.

Mr. BLUMBERG. What was your question?

The CHAIRMAN. The proposition was this: Whether or not there was an actual cessation of the flow of business which could be traced to the rate of fare.

Mr. BLUMBERG. Well, I said there were a number of them who wrote and said that they had taken off men.

The CHAIRMAN. But that is the result of no business. I want to know whether or not no business has come around because they did not have these books.

Mr. BLUMBERG. How can I answer that question?

The CHAIRMAN. That is what I ask you.

Mr. BLUMBERG. The only way that you can secure business is just as Mr. Newton said—to send men out on the road and endeavor to obtain it. If they then find that the expense of getting that business is very heavy, they may use the telephone; they may use the telegraph; they may send out 8 instead of 16 men.

The CHAIRMAN. But the query is: If they had the lower fare, could they then get any business?

Mr. BLUMBERG. They say to you in these questionnaires: If there was a lower fare, we would send out more men.

The CHAIRMAN. Could they get the business?

Mr. BLUMBERG. How do we know.

The CHAIRMAN. That is what I want to find out.

Mr. BLUMBERG. Don't you think that the way to find out whether concerns will give you business is to send these salesmen out to try to get it?

The CHAIRMAN. Yes; and they find that they can not get it whether they have low rates or high rates, so they stay in where they belong. It is not due to the fact that this book is not in existence. I am not talking for or against the book.

Mr. BLUMBERG. No; but I think we are both running around a circle. I say that every merchant, in order to secure business, finds it necessary to do something to stimulate business, and one of the things that he does to stimulate it is to send his men out on the road and try to convince the retailer that conditions are getting normal and that he ought to try and create business and he ought to put some good merchandise in his show windows and try to sell it. and if the merchant does not send these men out on the road you will permit this chaotic condition to remain, which I say it is the duty of everybody to try to remedy.

The CHAIRMAN. I agree with you in all that, and I hope you can work it out, but, nevertheless, I do not feel that I am getting much nearer the answer to the question whether or not the nonexistence of such a thing as a mileage book is curtailing the flow of business.

Mr. BLUMBERG. Well, I can not answer it, sir, any other way than as I did.

The CHAIRMAN. I think that is the intelligent reply myself.

Mr. GRAHAM. Mr. Chairman, are we going any further to-day?

The CHAIRMAN. As the committee desires, but otherwise no.

Mr. SANDERS. There will be a roll call anyway very soon.

Mr. GRAHAM. Will this witness be back to-morrow?

The CHAIRMAN. I expect he will.

Mr. BLUMBERG. You prefer that I would?

The CHAIRMAN. I expect that you would.

Mr. GRAHAM. I would like to ask you a question or two to-morrow, Mr. Blumberg.

The CHAIRMAN. If there is no objection, we will adjourn now until 10 o'clock to-morrow morning.

(Whereupon, at 12 o'clock noon, the committee adjourned until 10 o'clock a. m. Thursday, March 23, 1922.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Thursday, March 23, 1922.

The committee met at 10 o'clock, a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. Yesterday, at adjournment, Mr. Blumberg was testifying, and we will ask him if he will continue. It may be desirable to state to those present that by virtue of special order the House will convene at 11 o'clock to-day, and the subject that will come up is undoubtedly one that will attract the attention of every member of the committee and others of the House, so that I think the latest we could expect to be here would be 11 o'clock, if not 5 minutes before 11, and I will ask you to have that in mind, Mr. Blumberg.

STATEMENT OF MR. SAMUEL BLUMBERG, COUNSEL FOR THE NATIONAL COUNCIL OF TRAVELING SALESMEN'S ASSOCIATION, 200 FIFTH AVENUE, NEW YORK—Resumed.

Mr. BLUMBERG. I will make my statement very brief. I wish to refer to the testimony given by Commissioner Esch, particularly with respect to the Pullman surcharge. His statement is to this effect:

"Another feature of this bill, if an interchangeable mileage ticket is sold at 2½ cents, would it not eliminate payment of the surcharge when traveling in a Pullman? The surcharge for the Pullman is 20 per cent added to the regular fare."

I assume the 20 per cent was a typographical error and was intended to be 50 per cent.

"Would the sale of the interchangeable mileage ticket permit the holder to go into a Pullman and get the same service that a one-way passenger gets by paying the straight 3.6 cents fare plus the surcharge?"

It is our understanding that the surcharge has absolutely no relation whatever to the passenger fare; that when mileage books were in use and when they were interchangeable on many roads, the customary procedure was for one who owned a mileage book to purchase his Pullman ticket. The charge for that ticket would be the regular rate prescribed by the commission plus 50 per cent, and certainly has no relation to the transportation fare.

The commissioner further refers to the difficulty that would arise if an interchangeable mileage book were lost or stolen. Well, so far as the railroad companies are concerned, that situation existed during the very many years that mileage books were in force, and I doubt very much whether the railroad companies would be out of pocket any money if a mileage book were lost any more than they would be out of pocket if a transportation ticket were lost, and we think that if there is any difficulty or if there is any inconvenience that would arise with respect to that situation, there are many ways that these difficulties could be overcome.

The chairman yesterday referred again to the question of the effect that these mileage books would have upon business. I telephoned to New York and had a number of these questionnaires that I mentioned yesterday sent down. Of course, I have not all of them. But some of the communications that accompanied these questionnaires, I think, reflect very clearly the position of the merchants of the country.

Some of these concerns are very large institutions, and while I do not want to take up too much time, I believe that some of these letters should be read into the record and the committee be informed. Some concerns take this position, and one in particular says, "We have put more men out on the road in 1921 than we did in 1919."

That is a different slant to this situation, and he says, "The reason we took that position was because we tried to create business. We found that the salesmen on their first trip did not get any business, and we sent them out on their second trip to endeavor to get business, with the result that they secured business." And he says in this communication that if these rates were made lower, if they were not so prohibitive, it would be the means of having other institutions take the same attitude, which, in other words, would stimulate business.

This concern I refer to is an institution of some importance—the Krippendorf-Dittmann Co., manufacturers of shoes, at Cincinnati—a concern that sends out a number of traveling salesmen.

Here is a communication from Thomas A. Edison (Inc.), giving a list of their various subsidiaries and making mention of the facts as to what this mileage book would do for business. Concerns like the W. L. Douglas Shoe Co. say: "The salesmen would be unable to go into many new, smaller towns, resulting in increased business."

A concern like J. B. Pierce Co., of Cleveland, Ohio, in which they say, "It would increase the number of our sales force and greatly add to the number of weeks our men would travel."

A concern like the Tate Paper & Color Co., of Glens Falls, a concern that employed 24 salesmen in 1917, 22 in 1918, 20 in 1919, 18 in 1920, 16 in 1921, and they say, "As wall-paper manufacturers only have one season in each year, and salesmen have to make their rounds regardless of expenses, costs have been minimized by having fewer salesmen," and indicates that if the rates were reduced it would increase the selling force.

The Stafford Ink Co.—

The CHAIRMAN (interposing). That is all interesting, but we can not lumber up the record with a great number of individual cases. Will you kindly make references to any typical concern and then, if you choose, lump up so many more, giving your summary.

Mr. BLUMBERG. My summary, as I view these questionnaires, is that a great many of the firms of the country take the position that they believe the way to stimulate business is to reduce the selling overhead. They say the way to get business is to send salesmen out on the road to get it, and the way to do that is to reduce the transportation cost.

The CHAIRMAN. Mr. Blumberg, do you put that out as an answer to the proposition I suggested yesterday, or is it a general argument?

Mr. BLUMBERG. Well, it is my summary of the questionnaires that have been sent out by the association.

The CHAIRMAN. In your opening you referred to a statement made by the chairman. I never approached the angle at all that you mentioned. Yesterday you took a go at it and side-stepped the proposition, and to-day you have gone around it. I do not care anything about discussing it, but if you are going to use me I want you to say either yes or no that you are answering my question by this statement you are making. If you are not, I do not care anything about it; and if you are, I want to elaborate it a little with you.

Mr. BLUMBERG. With due respect to the chairman, it is my thought that your question is hypothetical and could not be answered except by facts and figures.

The CHAIRMAN. It is no more hypothetical than what you have submitted here as the speculation of an indefinite number of concerns.

Mr. BLUMBERG. I do not think this is speculative or hypothetical. These are questionnaires that were sent out to the merchants of the country, and I think their answers reflect the actual, concrete facts in their business.

The CHAIRMAN. None of them, so far as you have mentioned, indicate, except one, that they really succeeded in getting any more business.

Mr. BLUMBERG. I gave you the various slants.

The CHAIRMAN. Yes; and, of course, if they can get cheaper expenses they would like to have that. Of course they would.

Mr. BLUMBERG. That is not our point. We do not say it is merely a question of making the rate cheaper. We say that the purpose of the commission should be to do what it can to stimulate business.

The CHAIRMAN. Oh, of course.

Mr. BLUMBERG. And we say that one of the ways to stimulate business is to make the rates lower so that these men may go out and get business.

The CHAIRMAN. I will accept that statement but not as an answer to my proposition.

Mr. BLUMBERG. Yes. Now there is just one more thought I should like to urge in conclusion, and that is this: I mentioned it to some extent yesterday. We believe that the Interstate Commerce Commission, upon a full and complete examination of the facts and figures which we think we are in a position to present, will order a book issued at a reduced rate, and we are satisfied that if the facts and figures submitted to that body show that the commission ought not to issue such a book that would end the controversy, and so we say to you gentlemen all we want is to have you put the commission in a position where it will be able to direct the roads to issue that book after full inquiry.

Mr. JOHNSON. What is there in the transportation act now that prohibits the commission from directing the roads as they see fit?

Mr. BLUMBERG. My own view of the situation is there is none, but the commission's view is definitely to the contrary. I read yesterday a letter that was sent to me by the commission in which they stated very frankly that they had no authority; that all they could do was to suggest to the roads the advisability of issuing interchangeable mileage books, but they could not order or direct the roads to do it; and so I said yesterday that we were placed in the position where the commission having said it had no authority, it was necessary to give them authority in very definite language, and that was the purpose of the legislation.

Mr. JOHNSON. Is that your construction of the transportation act also?

Mr. BLUMBERG. No,

Mr. JOHNSON. Another question; that is all I wanted, yes or no—then why do you say you have confidence in the commission doing this?

Mr. BLUMBERG. I say that because the only question that will then arise—

Mr. JOHNSON. I do not think this committee ought to be flattering the commission. I think we ought to have cold-blooded facts.

Mr. BLUMBERG. I agree with you, sir.

Mr. JOHNSON. That ought not to go in the record unless you do have confidence in the commission.

Mr. BLUMBERG. My answer is this: The position we would be in then would be that all the commission would have to determine would be the question of rates. That is what the commission is directed to do. That is what they were organized for. They would not have to pass upon any constitutional question. They would not have to determine their rights under the act to regulate commerce. You would tell them plainly that they have that authority and then put that body in a position where all it needed to do was to determine the rate.

Mr. JOHNSON. I want to ask you another question since that has come out. Then if they have nothing to do with the constitutionality of these matters or of deciding the constitutionality of them, and the commission is now making a fight against this proposition based purely on a constitutional question, I now, again, ask you why you have confidence in the commission doing this.

Mr. BLUMBERG. Firstly, sir; it is not my personal opinion that the commission has concluded that the bill is unconstitutional.

Mr. JOHNSON. The spokesman for the commission said it was, and gave his authority.

Mr. BLUMBERG. I think the commissioner was particularly careful to couch his language. I think he made the statement, as he said verbally, that a majority of the members of the commission were of the opinion that the bill was unconstitutional, and the question was put to him upon what grounds it was unconstitutional, and the reflex I got was that it was by unconstitutional implication; there was nothing directly in the bill that made it directly unconstitutional. Now, if Congress passes this legislation, after all this discussion, I will not worry very much about whether the commission will raise the question of its constitutionality, so long as the rate is eliminated.

Mr. JOHNSON. That is your answer to my question?

Mr. BLUMBERG. That is my view of the situation.

Mr. JOHNSON. I do not care to ask any more questions.

Mr. MAPES. You are a lawyer, I understand?

Mr. BLUMBERG. Yes.

Mr. MAPES. Yesterday, in looking over the cases that have been cited during this hearing, I saw a reference to a Massachusetts case, which seems to me to be more nearly in point than anything that has been commented upon here, and I wonder if your attention has been called to it.

Mr. BLUMBERG. Yes; you mean the case with respect to the school children having a special rate?

Mr. MAPES. No; the case of the Attorney General v. The Old Colony Railroad Co., and the Attorney General v. The Boston & Albany Railroad Co., reported in 160 Massachusetts, where the court passed upon the constitutionality of a statute of the State of Massachusetts, passed in 1892, requiring the roads within the State to sell interchangeable mileage books.

Mr. BLUMBERG. No; I do not recall that case. Is not that the case referred to in the Towers case by reference?

Mr. MAPES. It is referred to in the Michigan case.

Mr. BLUMBERG. Yes; I meant the Michigan case.

Mr. MAPES. The statute is set out in a footnote to the decision, and is short. It is as follows:

"Every railroad corporation operating within this Commonwealth shall provide and have on sale for \$20 mileage tickets representing 1,000 miles, which shall be accepted and received for fare and passage upon all railroad lines in this Commonwealth, as well and under like conditions as upon the line or lines of the corporation issuing such ticket."

"SEC. 2. Such tickets or any part thereof shall be redeemed by each corporation issuing the same, upon presentation by any other railroad corporation."

And, then, section 3 permits or authorizes the State board, upon the petition of any road, upon showing, to exempt any road within the State from the provisions of the act. Those are the three sections of the law, and a majority of the court held the law unconstitutional, largely upon the ground, as I read it, of a lack of contractual relations between the roads, and because one road could not be required to accept a ticket that had been sold by another road. It is rather interesting to know that Mr. Justice Holmes, who is now a member of the Supreme Court of the United States, was one of the two judges joining in a dissenting opinion. What is your comment on that case?

Mr. BLUMBERG. I have not seen the case. May I have that citation again?

Mr. MAPES. One hundred and sixty Massachusetts, page 62.

Mr. BLUMBERG. In that case they do not mention the rates, do they? They just provide for the issuance of the mileage book—or do they fix a rate?

Mr. MAPES. Yes; a thousand-mile book at \$20.

Mr. BLUMBERG. Of course without reading the opinion, it would strike me that that would be somewhat similar to the Smith case, and that the question of its constitutionality was predicated upon the fact that the statute had fixed a maximum rate and by that statute they sought to reduce the rate by the issuance of an interchangeable mileage book, but that is not the bill before you.

Mr. MAPES. I do not understand that the court decided it upon that ground. If the committee is interested, I would be glad to read a paragraph or so from this decision.

Mr. SANDERS. I think it would be very interesting.

Mr. MAPES. Beginning at page 91 [reading]:

"Although, by reason of the public nature of the employment, the legislature can establish the rates of fare to be demanded by common carriers of passengers, we do not see that such carriers can be compelled ultimately to take in payment anything which any other person could not be compelled to take in payment of a service rendered or in discharge of a debt. If a debt had been once incurred it would not be discharged except by a payment in money or by the satisfaction of an execution by a levy upon tangible property. Although there may be little or no practical difficulty between solvent railroads if they choose to obey the statute, yet in theory each ticket or part of a ticket surrendered by a passenger for transportation represents a separate cause of action against the railroad issuing it. There is no fund provided for the redemption of the ticket and no tangible property on which there is a lien. This statute puts no limit upon the number of mileage tickets which any railroad may issue, or upon the time within which they must be used. It does not prohibit a railroad from selling them for less than \$20 each, although it must redeem them at that price. It is possible that a railroad in need of money might resort to enormous sales of such tickets as a mode of raising money, and that these tickets might remain outstanding, to be used on other roads indefinitely, and that many of them might be presented for redemption at some remote time in the future, when the railroad company issuing them might be unable to redeem them. If it be assumed that under the power to regulate the fares of common carriers of passengers, the legislature can require the passengers to be carried before the fares have been actually paid in money, the security for the ultimate payment of the fares in money ought, we think, to be as certain as that required when private property is taken for public uses, and we are of opinion that this statute does not provide adequate security."

Then there are two or three other sentences further on in the opinion which I would like to read:

"One railroad is in effect authorized to make a contract for another, but the railroads are not, in fact, the agents of each other in issuing these tickets. It has often been said that the legislature can not make a contract between two or more persons which they do not choose to make, although it may sometimes impose duties which can be enforced as if they arose from contracts. Without denying the power of the legislature to determine the form of the contracts

which common carriers of persons or merchandise must make concerning transportation, and without considering the authority of the legislature to delegate this power to a board of public officers, we are of opinion that this power can not be delegated to private persons or corporations."

I may say that the minority opinion says that the probability of the roads not being able to collect from each other is infinitesimal.

Mr. BLUMBERG. That is the minority opinion?

Mr. MAPES. Yes; and that the two judges dissenting do not think that point ought to be seriously considered, but the language which I have read is the language of the majority of the court.

Mr. BLUMBERG. How old is that case, may I ask?

Mr. MAPES. It was decided in 1883, I believe.

Mr. BLUMBERG. In other words, that case turns on the question that it was unconstitutional to compel contractual relations between carriers intrastate. It would be a difficult thing to apply that doctrine, as it exists to-day, with respect to the handling of freight and the interlocking of carriers handling passenger traffic on a through ticket from a point in the East to a point in the West. One could not be denied the right under the act to regulate commerce and under the rulings of the commission to get a ticket in New York that would take him to the Pacific coast, even though some road might become insolvent.

Mr. MAPES. That is the question that the Massachusetts case raises, as to whether that could be required unless the railroads choose to establish joint rates.

Mr. BLUMBERG. On that point I can only say that I think the Towers case is law to-day and would stand, and on the question of the constitutionality of this bill it is simply a repetition of what I said yesterday, the statute would have no application where a bill makes no provision for a rate.

Mr. MAPES. In view of that decision, if it has not been overruled by the Supreme Court of the United States, would the association which you represent feel that it was advisable to insist upon the complete and unqualified interchangeability of these mileage tickets in interstate commerce.

Mr. BLUMBERG. No; certainly not.

Mr. MAPES. Could not the bill in some way be amended to do away with that objection?

Mr. BLUMBERG. The interchangeable mileage book would either have to be good on all roads or the value of it would be gone, and if this case that you mention is good law to-day, it would apply as well to any few roads over which these interchangeable mileage books would be good.

Mr. MAPES. The great bulk of traveling men do not travel from one State to another, do they?

Mr. BLUMBERG. That is difficult to answer. There are a great many traveling men in the country, and if Pople's Index is a fair statement, I think they run close to 800,000 men, and a great many of them travel intrastate and a great many of them travel interstate.

Mr. MAPES. Are the individual roads issuing any of these mileage books?

Mr. BLUMBERG. So far as I know, none to-day.

Mr. MAPES. You would not think it would be advisable to direct the Interstate Commerce Commission to require the roads subject to the provisions of the transportation act to issue mileage tickets unless it carried with it this interchangeable feature?

Mr. BLUMBERG. In what respect would the two bills be different? In your case, you would direct the Commission or rather authorize, you say, the Commission to direct; is not that your thought?

Mr. MAPES. No; my question is whether, in your opinion, it would be desirable to direct, using the same language that this bill now uses, the Interstate Commerce Commission to require the railroads engaged in interstate commerce to issue mileage books without the interchangeable feature.

Mr. BLUMBERG. Then you would not be accomplishing anything. You would have some roads that would issue them.

Mr. MAPES. On the individual road?

Mr. BLUMBERG. Avoiding or eliminating the interchangeable feature.

Mr. MAPES. Yes.

Mr. BLUMBERG. That would mean that salesmen traveling in the middle western territory would have to carry a number of mileage books; the same in the South and in the East. I think that would destroy its feasibility. I think the purpose that actuates the legislation would be destroyed.

Mr. MAPES. I wondered what your opinion would be in regard to that.

Mr. BLUMBERG. I think if it came to that point, Mr. Mapes, where it would have to be a mileage book issued by each road, I think the useful feature would be gone and we would be just as well off without any.

Mr. MAPES. You would be just as well satisfied not to have any legislation as to have that?

Mr. BLUMBERG. Yes; I would.

Mr. MAPES. Do you feel that you speak the sentiment of the association which you represent?

Mr. BLUMBERG. I can only say that we have discussed the interchangeable feature of the book and the matter has been up for discussion on numerous occasions, and I think that I can speak authoritatively. I do not know. The gentleman seated at my right, Mr. Schanberg, says I may. He is the managing director of the national council, and he should know.

Mr. MAPES. Personally, I would be glad to have your comments, after you have been able to investigate the authorities further and see what the present law is with respect to this Massachusetts case.

Mr. BLUMBERG. I will be very glad to do that.

May I add at this point, Mr. Chairman, that Mr. Wilson, who appeared here for the Friars Club and the Lambs Club, has gone back to New York, and asked me to have it appear on the record that I appear for him, and to say that he supports this legislation, and if he were here he would say substantially what I have said with respect to these mileage books?

The CHAIRMAN. The reporter will please embody in the record as an official utterance from the Friars and Lambs Clubs that Mr. Blumberg appears as the representative of those clubs in behalf of Mr. Wilson, who has already put in a personal appearance here.

Is there anything further, Mr. Blumberg?

Mr. BLUMBERG. No; I think not.

Mr. HOCH. I want to ask one question with further reference to the question involved in Mr. Mapes's reference to the Massachusetts case. I understand that case to hold that within the State of Massachusetts there was no power to impose contractual relations upon carriers in the matter of an interchangeable mileage book. Now, Commissioner Esch laid quite a little stress upon that proposition the other day, but yesterday, in the discussions, the proposition was more or less discounted. I want to ask to what extent the Interstate Commerce Commission now has—or rather, does the Interstate Commerce Commission now have and does it exercise unlimited power in the matter of freight shipments or in the matter of passenger transportation to compel that very thing to be done with reference to interstate traffic?

Mr. BLUMBERG. As far as I know, they are doing that exactly now.

Mr. HOCH. Can a shipper have a freight shipment accepted by a carrier, dictating without limit the roads over which that shipment is to pass, and pay the carrier accepting the shipment for the full amount of the freight to its point of destination regardless of the number of roads over which it goes?

Mr. BLUMBERG. I can only answer you, sir, by telling you that, so far as I know, the Interstate Commerce Commission has complete jurisdiction over the movement of freight from the point of origin to the point of destination, and the roads over which it shall go. There may be some special contract, I assume, between the carrier and the shipper.

Mr. HOCH. If that is true, then, as far as the argument based upon the possibility of insolvency of the carrier accepting the shipment is concerned, we have that same thing involved in the situation now.

Mr. BLUMBERG. Exactly. That is what I said to Mr. Mapes—

Mr. MERRITT (interposing). I simply want to say, if Mr. Hoch will permit an interruption, that you may have noticed, Mr. Hoch, a recent ruling of the Interstate Commerce Commission giving the New England roads a greater percentage of joint rates. The other roads have now enjoined the operation of that order, so that that whole question is going to be thrashed out in the courts now.

Mr. HOCH. I am not raising a question as to the proportion. I am raising the question, based upon the argument in the Massachusetts case, where one road sells a ticket and receives the full amount for the carriage, and that road might subsequently become insolvent, while the other road had furnished the carriage and would never receive its pay for the carriage.

Mr. BLUMBERG. Exactly.

Mr. HOCH. Now, the question I am raising is that if that argument is to prevail, do we not have that in essence to-day with reference to any sale of

a passenger ticket or freight shipment over various roads of the country where the receiving carrier accepts the full amount.

Mr. MERRITT. I was referring to the question of the contractual relations between them.

Mr. BLUMBERG. It would seem that Mr. Merritt's statement would support Mr. Hoch's view. The very fact that the Interstate Commerce Commission had prescribed the amount that would go to the eastern roads shows that the power is vested in the commission to apportion these different amounts, and the case cited raised the question as to whether the amounts apportioned were proper.

Mr. MERRITT. The point they have raised in this injunction proceeding is whether they have any power at all.

Mr. BLUMBERG. I certainly do not think the question would come up in respect to freight, and if it did not, it certainly should apply equally as well to passenger fares. That is our position.

Mr. GRAHAM. There is one proposition that Commissioner Esch presented that I have not heard you refer to; in fact, I have not heard it referred to very much by any one, and yet to my mind it is a very important proposition, and it is this: Under the transportation act as construed by the Interstate Commerce Commission and the Supreme Court in the Wisconsin case, it is very evident that both the commission and the Supreme Court think that Congress has expressed its judgment that the carriers shall have a fixed return, and that that has been suggested in the act as 6 per cent, and it is probable that so long as section 15a remains in the statute, the Interstate Commerce Commission will continue to think that that is the yardstick by which to measure those matters.

Now, in pursuance of that, a general rate system has been established throughout the country, and the Supreme Court has even gone so far as to hold, as I understand it, that that rate system or level of rates can extend into the States, and that the Interstate Commerce Commission governs all that. Now, let us suppose that we do this thing that you suggest we do here; the Interstate Commerce Commission evidently believes, from what Mr. Esch said, and I can see no reason for passing the act unless it does mean that, there will be a reduced rate given to purchasers of interchangeable mileage books. The very moment we do that, do we not disturb the level of rates scheme that is spoken of in the Wisconsin case, and when you reduce the rates to a certain class, the purchasers of these mileage books, do we not at once make the rest of the rates go up? In other words, if the plan is to give a certain return to the carriers, how are you going to reduce one class of return without raising the rest?

Mr. BLUMBERG. Mr. Graham, I had refrained from referring to the question of revenue to the roads before this body for several reasons, because I assumed it was a matter that could be taken up before the commission, but since you have asked the question, I will try to answer it as best I can so far as our association is concerned. We view the situation regarding the railroads exactly as a merchant would view his business. In other words, if you had done a very large and substantial business for many years and suddenly, because of war conditions for or whatever reason, you found that you were going backward, you were losing money, and that you still had your fixed and permanent overhead, such as rent and whatever may be the fixed overhead expenses of your institution, you would commence to take inventory. You would say to yourself, "What should I do to try to create business. I must do something; now what will I do?" You will not turn your head against the wall, you will turn your head around and face the sun and see what you should do. Now, that is what the merchant did after the war. He found that his merchandise was tremendously high and that he could not sell it, yet his fixed overhead was there, and so he concluded to take a very substantial loss on his merchandise, and commenced to shoot that stuff out and tried to sell it, or in other words create a demand for his own commodity. Now, we apply the same doctrine to the roads. We say that the railroads to-day are not running their affairs on a proper business basis.

As an illustration there has been mentioned the Boston & Maine Road. I understand from testimony taken before the Senate committee there were 31,000 passes issued on that road, each pass good for three people. That would be approximately 90,000 passes in a year. Now, we would not call that good business. In that same hearing I am told there was testimony to the effect that some particular road had a very substantial surplus in its banks—five or six hundred thousand dollars—and needed money for some particular purpose.

The money in the bank was paying 3 per cent. They went to the bank and borrowed money and paid 7 or 8 per cent. You would not call that good business.

Now, there are a number of things that the roads, we contend, could do if they attempted to view the economic conditions as they exist to-day in the same way as the merchant is viewing them. It may be conjecture and it may not be so, but if the tendency is to try to create business, and if it is shown, as the records of the commission show, that there has been a falling off in the passenger traffic and a falling off in the revenue from that traffic, then is it not the duty of the roads, just as it is the duty of the merchant, to see what can be done to bring about more business? And we say that if this book is issued, which, after all, does not disturb the basic rate but is the sale of a commodity at wholesale, it will, through the issuance of that book, stimulate business, as was the case with the merchant who reduced the price of his merchandise. The level would remain the same, but the income would be increased.

Now, suppose it occurred at the end of the year that we were wrong and that did not happen. It is very much like the story that you know about the postage stamp: When they used to charge 25 cents somebody came along and said, "If you charge 2 cents you would make a lot of money"; and some lord over there in England said it was ridiculous; that it was absurd; but it was finally passed and established at 2 cents and a great deal of revenue was derived from it.

Now, it is on that same theory of volume business that we believe the railroads will get their revenue, because, after all, there are only two ways to get revenue: It must either come from volume business or it must come from higher fares.

We find now that by virtue of an increased rate there is a decline in travel. Now, let us try the other. Let us try to get volume business by reduction of rates and get a volume of business as a return.

Mr. GRAHAM. Let us concede for the sake of the argument that you are right; then whatever will apply to the interchangeable mileage ticket will apply to all kinds of railroad passenger business.

Mr. BLUMBERG. Well, frankly, I think if there is a start made in the right direction, and there is business created, I think the eventual result will be a return to normal conditions and a reduction of all rates; in other words, a horizontal reduction.

Mr. GRAHAM. That might be so.

Mr. BLUMBERG. It may not be done this year and it may not be done next year, but is not that precisely what every merchant is after, and is not that what we ought to do to try to bring that about?

Mr. GRAHAM. Well, yes.

Mr. BLUMBERG. It may take several years to do it. That may be true.

Mr. GRAHAM. The question is whether it will do it with a statute which provides that they shall have a certain return, or seems to provide that, and then says that anything over a certain return that they make, the Government will take away from them. You do not leave very much incentive to the carrier to act upon its own initiative; and the question in my mind is whether anything of this kind ought to be done—whether there ought to be any authority for special fares or a decrease in fares as long as the scheme that now exists in section 15a is in the law.

Mr. BLUMBERG. Then, Mr. Graham, you would do what the merchant did not do. In other words, you would sit tight, do absolutely nothing, and say, "Well, now, as we stand to-day, we are hopelessly in bad shape; we are not making any money; that is the roads are behind, and it would be absurd to reduce any rate because we could not get sufficient revenue."

Mr. GRAHAM. Do not misunderstand me. I do not take that attitude at all. I go way back and would begin at the beginning and fix the law so that the general plan would be different.

The CHAIRMAN. Will you suffer an interruption, Mr. Graham?

Mr. GRAHAM. Yes.

The CHAIRMAN. Do you not concede there is a difference between the policy of a business man who decides he will reduce his prices and try out that plan for getting a larger sale at his own option and on his own initiative as contrasted with something forced on a railroad by the Government, whether they believe in it or not. You reserve, under the plan that you suggest, of course, automatically the right of the merchant to do as he pleases, when he pleases, and shut off when he pleases.

Mr. BLUMBERG. No.

The CHAIRMAN. But you come to the Government of the United States, and, as customers of the railroads, you say, "We want you to fix the railroads so that whether they want to or not they must reduce prices." Now, that is not a fair comparison.

Mr. BLUMBERG. Now, let us see. Did you not, at the very outset, when you adopted the act to regulate commerce, did you not enact that law because you concluded that there was some necessity for supervision over the roads of this country?

The CHAIRMAN. Yes.

Mr. BLUMBERG. Now, why was that necessary? If the roads had not done the things suggested which Congress thought justified governmental supervision, we would never have had an act to regulate commerce.

The CHAIRMAN. Yes.

Mr. BLUMBERG. Now, that same thought applies to the merchants equally as well. The very reason why some of these trade bodies are organized among merchants of the country is because there are merchants that attempt to do things that undermine and weaken some of their larger competitors. These thoughts have been brought to their attention and necessitated the organization of trade bodies which would never have been necessary if these merchants were not guilty of these practices, and I compare the two in that way.

The CHAIRMAN. They have their remedies in their own hands and are not subject by law to the jurisdiction of anybody.

Mr. BLUMBERG. Not entirely. I think it is a very fair comparison. Some people have said, "What will you do with respect to the labor situation?" That is something forced upon the roads; something that is permanent and something over which, perhaps, they have no control. I say that is equally true of business. There are many enterprises where the merchant is prevented from taking into his own hands the running of his business so far as the basic charge of a commodity is concerned, because of labor and other conditions, but he takes the situation as he sees it and tries to see how he can remedy it, and I say in the same way the roads realize they must maintain passenger traffic. They must run their trains. They have got to go from one point to another point and arrive at schedule time, and that is a fixed, permanent overhead of the road, and we say that if they will do something that will stimulate and foster business, their overhead will not change, their overhead will not grow, and they will get the added volume of business, and one of the suggestions we offer to bring that about is to give to these men who go out and create business an opportunity to stimulate that business, which we think the mileage book will do.

The CHAIRMAN. Now, when it comes to the production of a merchandise article, the producer of that article decides whether he will meet the labor conditions, and so forth, for himself.

Mr. BLUMBERG. Yes; but suppose—

The CHAIRMAN (interposing). Well, that is the end of that.

Mr. BLUMBERG. Pardon me.

The CHAIRMAN. The producer decides that for himself. If he wants to quit, he quits, and you do not buy a hat at 50 cents less than the regular price if he does not see fit to sell it to you.

Mr. BLUMBERG. Yes.

The CHAIRMAN. You take them according to the way he lets them out and you can not make him sell them for any less, or demand that he shall sell them for less, and you can not go around and say to him, "If you will make less price and make eight times as many, we will all buy hats." He may believe it or he may not. However, he acts as he pleases.

Mr. BLUMBERG. Let me answer that, sir. Suppose you and I were both in business in a particular locality, and I was producing a commodity at 50 cents and you found that you could not produce it at that price. You could not meet my competition. You would not simply say, "Well, I can not produce that article." You would say, "I wonder why he can turn out that commodity at 50 cents; his overhead is no different from mine; our enterprises are substantially the same; we are located in the same community; why can he bring it out at 50 cents, and why do I find that I must get at least 75 cents," and you would do everything you could to stimulate your production to meet that competitive price, would you not do that?

The CHAIRMAN. Yes; I would.

Mr. BLUMBERG. Now, that is what we say is true here.

The CHAIRMAN. But I would not let my customers come in and tell me what to do and how many to make and how many not to make and the price I should sell at.

Mr. BLUMBERG. If your customers told you that they would buy 1,000 at \$7.50 instead of 50, you would be inclined to take the order.

The CHAIRMAN. That is speculative, and it would be up to me to decide whether I would take it or not, and is not decided through legislation by some representative of the Government of the United States, which, after all, is the people and the consumers themselves.

Mr. BLUMBERG. Then you must go back to the time when you suggested the act to regulate commerce.

The CHAIRMAN. I am willing to take a go at each one of these animals and try to ride it, but I do not want to try to ride them both at the same time.

Mr. HUDDLESTON. Mr. Chairman, as it is obvious that no other witness can be introduced this morning, I would like to make an observation along the line of the discussion which has just occurred between the chairman and the witness, in which the chairman presents what he believes is a very wide difference in principle between the action that is requested here and the action of the merchant in reducing the price of his goods. May I suggest that the parallel is this, that under the transportation act—

The CHAIRMAN. Will you kindly permit me—

Mr. HUDDLESTON. I have not finished my question.

The CHAIRMAN. You have stated the proposition incorrectly as representing my view.

Mr. HUDDLESTON. Then, I suppose, the record will show that.

The CHAIRMAN. No; it will not, I am afraid. Well, I shall have to object to its being so stated, because it is not accurate—not through any fault of yours—and if you will substitute "the producer of goods" for "merchant," I will agree with you.

Mr. HUDDLESTON. The parallel is this, that by the transportation act and other laws to regulate interstate commerce, the carrier is recognized as a public functionary, as the Government in action. The Government is in the transportation business. It is under private control and financed by private capital, but, nevertheless, the Government is in the business, saying what shall be done and what return the carriers shall receive. Now, then, by this bill you are inviting the Government to reduce rates for the purpose of stimulating business, just as it would be entirely legitimate for a customer to suggest to a merchant that he put a lower price on his goods. It just so happens in this case that you are a part of the people who own the Government—of the Government itself—and in speaking for yourselves you are speaking in part for the owners of the business as to whether a change or not in the methods of running it shall be made. Therefore, you are not interlopers or meddlers in somebody else's business.

As a departure from that matter, I want to ask you this question, because I presume you will not be here to-morrow: Your idea is to stimulate business by encouraging the interchange of commodities between merchants. Obviously, that will not increase consumption except in a remote degree. I question how it will be of any general public benefit to merely encourage the interchange of commodities between merchants.

Mr. BLUMBERG. Why would it not increase consumption?

Mr. HUDDLESTON. Why will it. The burden is on you to show why it will increase consumption and not upon me to demonstrate the contrary.

Mr. BLUMBERG. Suppose, for illustration, that my theory, as I present it here, were true, and suppose there would be added business which would be precipitated because of the orders procured by salesmen.

Mr. HUDDLESTON. Just a moment, the added business you refer to is in the sale by the wholesaler to the retailer.

Mr. BLUMBERG. Right; and that will bring about numerous things.

Mr. HUDDLESTON. How is that going to increase consumption? Let me have your view on that point.

Mr. BLUMBERG. It will cure the problem of unemployment, in the first place, because it will bring into the factories of the manufacturer the hiring or the employment of a great many people who are now idle, because the factories are not working at full blast. That is one thing. In the second place, it will force down the relative price of the commodity to the consumer, because, after all, the rule of supply and demand must apply.

Mr. HUDDLESTON. What percentage of the cost of merchandise, speaking roughly, on an average, would you imagine is represented by the decrease in the expense of traveling salesmen, which you expect from this bill?

Mr. BLUMBERG. That is difficult to answer.

Mr. HUDDLESTON. Is it one one-hundredth of 1 per cent?

Mr. BLUMBERG. Oh, I would call it a good deal more than that.

Mr. HUDDLESTON. Well, what would you say?

Mr. BLUMBERG. I do not want to make any guess. What is the average percentage as figured, on the cost of a commodity, so far as selling expense is concerned? I am told the difference would be at least 2 or 3 per cent.

Mr. HUDDLESTON. The difference in what?

Mr. BLUMBERG. Mr. Calder will answer that.

Mr. HUDDLESTON. If Mr. Calder is going to answer it, we had better wait until some other day, and I will not take up the time of the committee further to-day.

The CHAIRMAN. The time for dissolving this meeting has arrived, unless the committee desires to go on.

Mr. HAWES. Mr. Chairman, the question of whether this bill will raise or lower rates has nothing to do with the subject we are discussing. All this bill does, as I understand it, is to provide a forum before which men demanding this relief may be heard and those opposing it may be heard, and the judgment of the commission will then obtain; and as to the effect upon the public and the effect upon the manufacturer and the effect upon the traveler, under this bill, that has nothing to do with this subject, because this bill does not lower the rate nor does it raise the rate. It simply puts the Interstate Commerce Commission in a position where it can do one or the other. It may lower the rate or it may raise it.

Mr. BLUMBERG. That is our position, as I stated yesterday.

Mr. HAWES. The bill only provides a forum where the public can be heard, whereas they can not be heard to-day.

(The committee thereupon proceeded to the consideration of executive business, after which it adjourned until to-morrow, Friday, March 24, 1922, at 10 o'clock a. m.)

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,**
Friday, March 24, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, if you will come to order we will proceed with the consideration of the bill affecting mileage books. Yesterday at adjournment it was understood that a representative of the railroads, because of other engagements next week, would appear to-day. The order of things is changed somewhat, so that we are able to go on, to the pleasure of everyone concerned, as originally proposed. The chairman will ask Mr. D. K. Clink, secretary and treasurer of the International Federation of Commercial Travelers' Organizations, to be the first witness. Mr. Clink, will you tell whom you represent and the extent of the organizations, and then make such statement as you desire?

**STATEMENT OF MR. D. K. CLINK, SECRETARY AND TREASURER
INTERNATIONAL FEDERATION OF COMMERCIAL TRAVELERS'
ORGANIZATIONS, CHICAGO, ILL.**

Mr. CLINK. Honorable Chairman and members of the Committee on Interstate and Foreign Commerce of the House of Representatives, permit me to express our deep sense of gratitude for the privilege of appearing before your honorable body. As a committee we represent the International Federation of Commercial Travelers' Organizations. This federation is composed of 14 of the largest leading commercial travelers' associations in the United States, with an affiliated membership of over 650,000, and while representing this vast army of progressive emissaries of trade and commerce, we bring with us the unqualified support and cooperation of the employers and business interests in general, best evidenced by documentary evidence at hand and herewith submitted to forestall any attempt to prejudice your minds by

attributing our presence here as purely commercial travelers' propaganda not indulged in by our employers.

The mutual interests involved bring us here in an earnest appeal for relief from present exorbitant and prohibitive railroad tariffs, both passenger and freight; but the first important step in the direction of normalcy affecting the commercial traveler and employer is the immediate resumption of scrip interchangeable mileage books of 3,000 or 5,000 miles' denomination and sold at a flat rate of not less than 25 per cent under prevailing passenger tariffs, the scrip to be acceptable for passage on trains and payment of excess baggage charges. We are not actuated in a desire to serve any selfish purpose, but, on the contrary, we believe that acceding to our demands would prove a stimulant to the present depressed business conditions, the reemployment of thousands of commercial travelers now idle, with additional thousands of benefit to our entire industrial fabric, common carriers receiving their full share of accruing benefits.

A return to normalcy should be the highest ambition of all; and to accomplish this much-desired result all must participate unselfishly, with that same degree of loyalty and patriotism that won the war, largely responsible for present conditions. The war has been won; war measures, restrictions, and profiteering must cease, receding to a pre-war level, and to that end our efforts are directed, and explains our presence. Having failed to induce railroad management by conciliatory methods to restore pre-war privileges by placing on sale interchangeable scrip mileage books at a reasonable reduction under prevailing passenger tariffs, and the Interstate Commerce Commission, it appears, not being vested with the authority to authorize the carriers to issue interchangeable scrip mileage books, the commission should be given such authority, and the issuance of such mileage at a reasonable reduction in price made compulsory. Under these circumstances, we naturally and justifiably appeal to the Congress of the United States, possessing the power and authority to enact into law the essential elements for the granting of relief prayed for.

The mileage book in question is neither new nor experimental, such mileage books being on sale for years before the war, and now on sale at regular tariff rates, good on all roads in the United States. The interchangeable mileage book is practicable and evidently remunerative to issuing companies or they would not indulge in their sale, leaving the only question involved the question of price. The commercial travelers, in accepting these mileage books in denominations of 3,000 or 5,000 miles, show a willingness to protect railroad revenues against a reduced income which might result from the issuance of smaller denominations, these mileage books being purchasable by the general public, avoids discrimination; and, as a matter of fact, commercial travelers would be the principal purchasers of the large denominations, entitling them to be classed as wholesale purchasers of transportation, the wholesale principle being recognized and practiced in freight charges giving carload lots preference over smaller quantities, and in the sale of mercantile commodities throughout the civilized world, and justifiable beyond question. In fact, it would seem no discrimination to grant a reasonable concession such as we ask for the traveling men who spend nine months of the year on the road, averaging 50 miles per day, or 13,500 miles per year, as against the average citizen, who travels less than 100 miles per year.

A most conservative estimate places accruing revenues to the carriers of the United States from commercial travelers alone at \$484,000,000 annually, to say nothing of their stimulating influence upon freight traffic. The mutual interests involved would suggest a more liberal policy on the part of the carriers, but avarice appears to have dulled their sense of appreciation.

The commercial traveler is a fixed, essential, and indispensable factor in our commercial activities. No class or profession of our citizenry is of greater value or importance to our country or Government. Dynamos of energy and optimism, they penetrate every nook and corner of the country, displaying the fruits of the world's industries at the door of every merchant, great or small, keeping them posted daily on the world's products and prices—beneficial to distributor, purchaser, and consumer. These facts taken into consideration should be sufficient to induce the Government to encourage the commercial traveler as an indispensable factor in the country's development and progress, entitled to special privileges in fact; but we do not ask it, but willingly accept these larger denominations of mileage books at a wholesale price of 25 per cent under prevailing passenger tariffs, making the large investment of a financial inducement to the issuing lines, to the purchaser a matter of convenience and ultimate

economy. It would, therefore, seem the part of wisdom and good business policy to encourage these advance agents of trade and commerce rather than discourage them through unreasonable prohibitive charges detrimental to business and a positive loss in revenue to the carriers.

Rail management evidently look upon the commercial travelers as fixed, compulsory patrons, a fixed asset as revenue producers, subject to any extortion, entitled to no consideration or respect, though joint partners in each other's success.

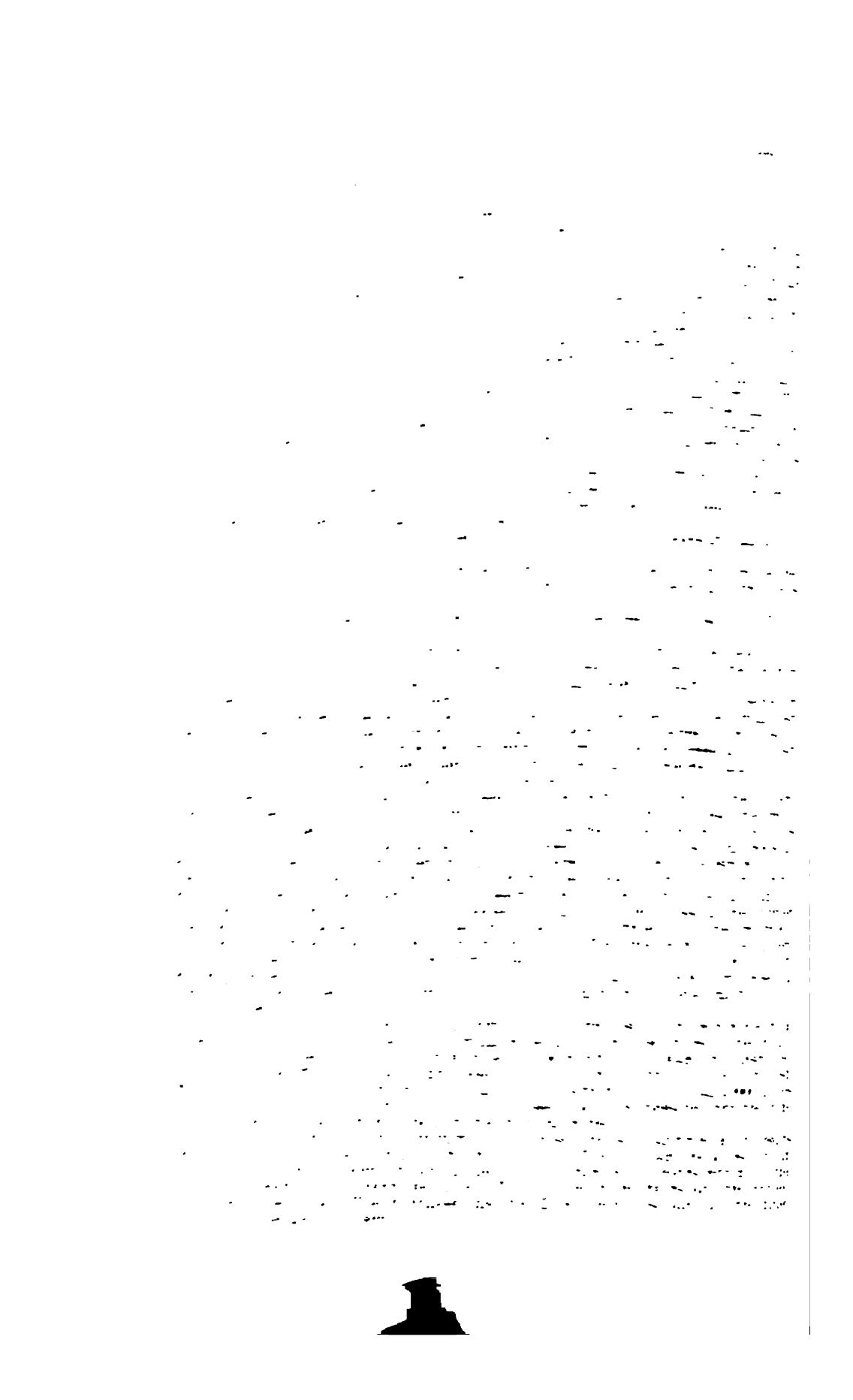
From facts and figures herewith submitted we feel justified in appealing to the Congress of the United States to enact into law measures making it compulsory upon the part of the carriers to issue interchangeable scrip mileage books at a reduction of 25 per cent under prevailing passenger traffic, believing it to be of national importance, if not a necessity for the rehabilitation and expansion of our commercial industries, now stagnant, causing the unemployment of millions, indifference and prohibitive rail rates being largely responsible for present existing regrettable conditions.

It being generally understood that the radical advance in rail rates was for the purpose of discouraging railroad traffic in order to facilitate the movement of troops and supplies during the war, and the commercial travelers, in a measure the principal sufferers, cheerfully submitted as a patriotic duty, believing prewar privileges would be restored when the war ended. The war, however, has passed into history, but still prohibitive war rail tariffs continue to be tenaciously exacted, regardless of demoralizing effects.

Railroad management throughout the country are now busily engaged in advertising reduced rates of one kind or another, ranging in a reduction of 25 to 50 per cent under regular tariff rates, in an evident desire to stimulate travel, but evidently blind or prejudiced toward the commercial travelers and interests they represent, who contribute hundreds of dollars to rail-revenues where the tourist contributes one. This distinction between a favored periodical patron and an every-day contributor to their revenue is a positive inconsistency. Commercial travelers are local travelers with few exceptions, and unable to take advantage of a tourist rate. Then why not make them a rate commensurate with their patronage, an incentive to national prosperity and progress, following the example of our Canadian neighbor, where commercial travelers are granted liberal railroad concessions, evidently appreciative of their influence for good, constant, and increasing revenue-producing activities?

In the original Senate bill 848 and House bill 2894 a rate of 2½ cents per mile is stipulated, which for reasons here explained is impracticable when applied to a universal interchangeable scrip mileage book; 3.6 cents per mile is the minimum passenger tariff. Many roads, however, owing to conditions, and particularly mountain roads, exact and are entitled to a rate running as high as 5 cents a mile, so that a fixed rate, as provided in the original bills, would not apply, but with a scrip mileage book, the scrip representing cash, makes the scrip book applicable to any road and variation in fares. With our proposition of a discount of 25 per cent under prevailing tariff rates, the conductor detaches the regular fare, be it 3.6 cents or 5 cents per mile, and the passenger enjoys the discount from the regular fare just the same. Let the sale of the mileage book be governed by the present tariff rate of 3.6 cents per mile, for instance, as an example, and 3,000 miles would amount to \$108; 25 per cent. or one-fourth off, leaves \$81; or, in other words, you purchase \$108 worth of transportation for \$81. A 5,000-mile book, at 3.6 cents per mile, \$180; 25 per cent off, \$135; or \$180 worth of transportation for \$135; involving the wholesale principle, which we contend as being just and reasonable, this scrip mileage to be acceptable on trains and for the payment of excess baggage charges.

The 3,000-mile book would undoubtedly be the most popular, from which the carriers would realize a handsome revenue from money paid in advance for transportation, requiring on an average of four months to consume. If the carriers find it profitable, as they evidently must, to sell tourist and summer-resort tickets at the discount they do, there can be no excuse for the cold indifference exhibited toward mercantile interests. This obdurate, unyielding policy on the part of the carriers is driving thousands of traveling salesmen to avoid rail transportation and use automobiles instead, and motor trucks are carrying tons of freight that would otherwise accrue to rail lines, a condition that should not exist in a progressive country.



Mr. HOCH. Then it is not a 5,000-mile book or a 3,000-mile book?

Mr. CLINK. No, sir.

Mr. HOCH. I understood from your illustration that he buys a 3,000-mile book.

Mr. CLINK. By basing it on 3.6 cents per mile, in order to get the selling price.

Mr. HOCH. Then he simply buys so many dollars' worth of transportation at a reduced price?

Mr. CLINK. Yes, sir; that is what he buys.

The CHAIRMAN. And 3,000 of those tickets, so to speak, good for a mile at 3.6 cents, would be embodied in what he refers to as 3,000 scrip book.

Mr. CLINK. It is scrip based on 3.6 cents. That is the minimum railroad tariff.

The CHAIRMAN. The number of 3,000 only indicates the number of coupons, each one of which would have a face value of 3.6 cents, regardless of the price at which they were bought.

Mr. HOCH. It really is somewhat inaccurate to call it a mileage book.

The CHAIRMAN. Yes; it is a scrip book.

Mr. CLINK. I agree with you. You can go to a ticket office here in your own city of Washington and purchase an interchangeable mileage book for \$30. Perhaps you are not aware of it and you may think you are buying a 1,000-mile book, but you are not. If you attempt to travel 1,000 miles on it you will have to pay about \$6 extra. That is a ticket good on any railroad in the United States.

Mr. HOCH. You refer to traveling men using autos; is it your judgment they are going to the use of autos because of the transportation charge or is it because the auto is so much more convenient and permits them to visit so many more towns and to go and come when they want to? Is not that the real reason they are using autos?

Mr. CLINK. In my interviews with prominent wholesalers and manufacturers and large employers of commercial travelers, they tell me that the rates are so prohibitive that it is cheaper to send their men out in automobiles, and they are contracting their territory for that purpose. One wholesale dry goods house in Chicago informed me a few weeks ago that they had 55 automobiles running, and that they were going to add 100 more unless rates were reduced. There is not question, from documentary evidence which I have here, that there are thousands of traveling men laid off.

The question was raised here yesterday or the day before by some gentlemen on the committee to the effect that a great many of the traveling men, and perhaps a majority of them, had their expenses paid by their house. Every traveling man, whether on commission or on salary, pays his expenses or he does not travel long. It is a commission basis all the way through. If your house pays you \$5,000 a year, it is based on what you can sell and produce. If you do not produce it, you do not get \$5,000 next year. So that the traveling men, no matter whether on commission or on salary, are paying their own expenses.

The CHAIRMAN. Mr. Clink, have you ever had any testimony from an employer who furnished automobiles to his traveling salesmen as to the cost of that service, with depreciation of the automobile considered and then compared with the cost of railroad transportation?

Mr. CLINK. I have not, Mr. Chairman.

The CHAIRMAN. Ultimately that would be quite an important consideration, if it became the practice, would it not?

Mr. CLINK. Yes; that is a good point.

The CHAIRMAN. For a house running 150 such automobiles.

Mr. CLINK. That is a good point, and it is one where the information could be easily obtained.

The CHAIRMAN. Do you know of any evidence bearing on that point?

Mr. CLINK. No, sir; I do not, but I could easily get it.

The CHAIRMAN. Do you feel sure about that—that you can easily get it?

Mr. CLINK. Yes; I could get it very easily from houses that are using them extensively.

Mr. JONES. Mr. Clink, is your argument based on the passage of the bill we are considering now, No. 848?

Mr. CLINK. To a large extent. Yes; absolutely so. Of course, you understand that when these two bills were introduced—

Mr. JONES (interposing). I do not see how your viewpoint would be embodied in this bill. The general purpose may be accomplished in that the Interstate Commerce Commission may direct the carriers to issue a "something" that will in effect be cheaper for the traveling public if bought in bulk than the individual purchase of a ticket.

Mr. CLINK. Yes.

Mr. JONES. But this bill provides for the issuing or directs the issuing of interchangeable mileage tickets.

Mr. CLINK. Yes, sir.

Mr. JONES. Then, coming back to Mr. Hoch's inquiry, this bill is not in harmony with your suggestions.

Mr. CLINK. That might be, but in considering this proposition, I felt, and feel now, that the extensive debate in the Senate and the debate that will probably occur in the House after you have made your report, will have more or less effect upon the Interstate Commerce Commission as to what we really want.

Mr. JONES. The point I am trying to make is whether you are figuring that this bill ought to be passed just as drawn or whether it ought to be amended.

Mr. CLINK. You have asked me the question, and that is one thing I did not want to approach because you might think I was trying to dictate terms to you. The bill, that is the amended bill, I think should be amended.

Mr. JONES. That is, the Senate bill should be amended?

Mr. CLINK. Yes, sir. There is one point in there that is ambiguous and has been discussed here in this committee during the last few days.

Mr. JONES. What is that?

Mr. CLINK. That is the question: Does the ticket as provided in there now apply to intrastate as well as interstate traffic? The bill now says, "interstate travel" and in the opinion of our committee "intrastate travel" should be injected in there to make it positive that it was good for either interstate or intrastate travel. You might get on a train in the State of Pennsylvania, as the gentleman said the other day, and want to get off at some point in Pennsylvania, and they would say, "No; that does not go. You will have to be going outside of the State, because this is for interstate travel." Since you have asked me the question, gentlemen, that is what I would suggest—that the bill would stand amending in that particular to make it clear that the ticket is good on the entire line.

Mr. SWEET. In your statement I understood you to say that your employers were behind this bill.

Mr. CLINK. Yes, sir.

Mr. SWEET. What evidence have you of that?

Mr. CLINK. I have got a satchel full of it down at the hotel and have had it here for two or three days; but I did not think you needed it. I will submit any amount of it to your committee if you wish it. It was all unsolicited. I have some here from all parts of the United States, from California to Maine. There is no question about the employer being behind this proposition. The employer's interests are the traveling man's interests, and the traveling man's interests are the employer's interests, and my contention is that the railroads stand in their own light when they can not see that our interests are one and identical, and we ought to pull together, but they do not seem to want to.

Mr. SANDERS. What was the amount of revenue you said the railroads received?

Mr. CLINK. \$484,000,000.

Mr. SANDERS. What, in your judgment, would be the effect on the amount of that revenue if the fare was reduced 25 per cent?

Mr. CLINK. I think it would be increased.

Mr. SANDERS. You think it would be \$484,000,000?

Mr. CLINK. I do. I have letters here saying that if the fare was reduced and put down where it was right, as we are asking, 25 per cent, they would reemploy the men who are now idle and would add more. Would not that be of advantage to the railroad people? Another thing, they have the use of our money which ought to be compensated for in some way, and I believe the reduction we ask would be a fair and just compensation as interest for the money we are investing. To be candid with you we do not look upon the mileage book entirely from its price. We add to it the convenience. When a traveling man has a mileage book in his pocket he is ready to go at any moment. I followed the road for 26 years. Six years of my time were spent on the frontier where we did not need any mileage because we rode in buckboards and on coaches; but I have been using mileage books since I started on the road, and I started in 1871. I have been using mileage tickets and mileage books of one kind and another since 1873, I believe, when they first came out. I have been using them ever since up to the time of the war. There was a time when I carried from 15 to 20 mileage books in order to travel my territory, because I traveled all over the United States. The mileage books consolidated or centered into one inter-

changeable book obviates all that surplus stuff you are compelled to carry and the amount of money you have to invest. It is an accommodation, and as I say, gentlemen, if the commission has not the authority, and taking it for granted, which I readily see, that the Congress would be venturing, perhaps, on dangerous ground to go into the matter of rate making—

The CHAIRMAN. Mr. Clink, suppose this bill should become a law and the power to make the rates for the book or scrip on a mileage basis were delegated to the Interstate Commerce Commission as provided in the Senate bill, and it should happen that that commission on investigation should make up their minds that there was no warrant, commercial or otherwise, for a reduction in the cost of transportation on a scrip basis, do you think then that business houses would refuse to put on more men to go out and get business, just because the fare was not reduced?

Mr. CLINK. I am inclined to think they would.

The CHAIRMAN. Well, now, think of that seriously, as a traveling man.

Mr. CLINK. Yes, sir; I am thinking of it seriously.

The CHAIRMAN. Suppose, for instance, you were at the head of a business and you found that there was business to be had, do you think that difference which you might expect, as you put it, of 25 per cent, say, in the cost of transportation, would keep you from putting the men on the ground to go after that business which you knew existed.

Mr. CLINK. Well, I can not say that I would. As a good business man, if I saw the business within my grasp, I would naturally grab for it.

The CHAIRMAN. Yes; and the 25 per cent would not be a hindrance.

Mr. CLINK. But business houses will not speculate on that, under present conditions. Otherwise, they would not take their men off the road.

The CHAIRMAN. But they want the railroads to speculate on it in their behalf.

Mr. CLINK. And you must take into consideration, Mr. Chairman, that the men pay their own expenses absolutely, and they hesitate to make the investment.

The CHAIRMAN. Of course, they do, but I am trying to get down to what is the real business and what would affect the flow of business in the markets of the country. I can not conceive of the head of any business withholding salesmen from the road on any differential which has been suggested here, if he thought the business was there to be obtained, but I can conceive that a man would not send traveling men out, at 50 per cent of the present cost, if he could buy it at such a rate, if he thought there was no business to be had; and, after all, the reduction in the cost of transportation is not the beginning and the end of the cost of sending out salesmen. You have every other incidental expense. You have the hotel rates and we do not expect that the Government can affect those.

Mr. CLINK. No, sir.

The CHAIRMAN. We have the salary of the salesmen; would it be fair to say that if the salesmen can be sent out for less money on the railroads, that if he is a man working on commission he gets the benefit of that deduction, and that his salary will be reduced by virtue of that reduction in fares? Not at all. We all expect to pay the salesmen the same amount, and we will expect to pay the hotels what they charge and the cabs in the towns and the wagons that take the trunks from the station to the hotel and back again. They all enter into it and yet this is an attack on one branch of the industry of the country, namely, the railroads, regardless of any curtailment of expense in respect of these other elements which must enter into the cost of sending a salesman out to transact business. Now, would you feel that the Government of the United States, if it had it within its power, would be justified in saying to the hotel people throughout the country, "You must crack off 25 per cent for commercial travelers for accommodation in your hotels."

Mr. CLINK. I wish they had the power.

The CHAIRMAN. Yes; of course I do, too. I employ salesmen. But would you think that the Government ought to do it?

Mr. CLINK. I do. I believe the travelers and the railroads combined are two of the greatest factors in our country's development that exist to-day.

The CHAIRMAN. We grant all that, but where is the limit? If the salesman is such a stimulant to business and sets the wheels going and makes trade for us, why should not the same thing apply to clothing dealers selling us clothes for less money, and so on down the line. What is the end if you apply it on that basis?

Mr. CLINK. If the clothing merchant was supplied through an agency through the traveling man or the traveling man's employer with clothing at less than he is now paying on account of overhead expense and traveling, he would sell you a suit cheaper than he is doing now, would he not?

The CHAIRMAN. I do not know that I caught that. Will you repeat it, please?

Mr. CLINK. If the overhead expense is reduced, it would naturally reduce the price to the suit consumer.

The CHAIRMAN. Yes; that is right.

Mr. CLINK. That answers your question.

The CHAIRMAN. No; it does not; far from it. It affects the matter of the clothes being sold cheaper, but in order to sell the clothing cheaper by virtue of less overhead expense to the clothing manufacturer and retailer and jobber you want the railroads to pay the bill.

Mr. CLINK. No.

The CHAIRMAN. Well, that is what it looks like.

Mr. CLINK. No.

The CHAIRMAN. Unless we can control all the elements of expense which go into the operations and costs of the salesman's business we are giving a class distinction to the railroad transportation companies which puts the burden on them if there is a burden. Now, why should you ask, or why should anybody ask, the Congress of the United States or the Interstate Commerce Commission to establish prices for the benefit of traveling salesmen? Why should you not argue that for a wholesale sale of transportation, scrip tickets, or whatever you call them, anybody who goes to buy at a wholesale rate is entitled to that consideration, and not pin it down necessarily to a consideration of traveling salesmen.

Mr. CLINK. You can not do that.

The CHAIRMAN. Are you in favor, then, of making the proposition so that anybody who buys a quantity of these scrip tickets should be entitled to the rate?

Mr. CLINK. Why, Mr. Chairman, that is the very thing embodied in my article. The interstate commerce law to-day prohibits discrimination.

The CHAIRMAN. Then in that way you are approaching a level at which transportation must be reduced if people buy it in a certain maximum amount.

Mr. CLINK. If you want to buy a 3,000-mile ticket, that is right.

The CHAIRMAN. Going a step further, where would you limit the use of that larger unit of transportation?

Mr. CLINK. How would I limit it?

The CHAIRMAN. Yes.

Mr. CLINK. There is no limit.

The CHAIRMAN. Yes; there is. There is a limit in the use of it. You have to sign the ticket.

Mr. CLINK. If you bought 20 of them, it would be better for the railroad people.

The CHAIRMAN. But would you limit it? For instance, if I had a family of 8 or 10 people traveling between Bridgeport, Conn., and New York in and out, for business or pleasure, and one thing and another, would you let my whole family use that ticket?

Mr. CLINK. Absolutely not; no.

The CHAIRMAN. So you are getting down to a class discrimination, and there would be a preference for some particular person who signed that ticket or that book.

Mr. CLINK. Mr. Chairman, I am sorry I can not agree with you on that discrimination proposition.

The CHAIRMAN. Very good. Suppose you go and buy a 5,000-mile book. Why do you buy that book? Why do you get that privilege?

Mr. CLINK. I do not quite catch your question.

The CHAIRMAN. When you buy a 5,000-mile book, do you expect to have to sign for that book?

Mr. CLINK. I expect to comply with any reasonable restrictions the company wants to place on it.

The CHAIRMAN. Then, would you have your name written on the book?

Mr. CLINK. Yes, sir; absolutely.

The CHAIRMAN. And would it be nontransferable?

Mr. CLINK. Yes, sir.

The CHAIRMAN. The minute you do that you establish a class of people who can get that service apart from those who can not get the use of a 5,000-mile book.

Mr. CLINK. Is not everyone obliged to sign his name to a contract?

The CHAIRMAN. Yes; they are, in a way, but, of course, the practice of the thing is that it is not everybody who uses mileage.

Mr. CLINK. Well, that is their misfortune.

The CHAIRMAN. Or can use 5,000 miles in the same length of time.

Mr. CLINK. I see no discrimination in the sale of the mileage book that we propose.

The CHAIRMAN. It must be for those who buy the book and for nobody else.

Mr. CLINK. No; there is nothing here to say that nobody else can do that.

The CHAIRMAN. There was a time when we could buy so many miles of mileage in a book and anybody could use that book.

Mr. CLINK. There were a few instances of that. That did not last long.

The CHAIRMAN. It was in force when the Government took charge of the railroads.

Mr. CLINK. On a few roads, but it was not general.

The CHAIRMAN. It was established on a few roads and there was a clamor for it to be universal.

Mr. CLINK. But we do not advocate that. The railroads contend they can not afford to do that. Well, we agree with them; perhaps they can not and perhaps they can.

The CHAIRMAN. What I am trying to find out is whether or not the men who come here representing commercial travelers are really, perhaps without any malice at all, speaking about a proposition which makes of them virtually a class apart, and that a favor is being done to the travelers rather than to the general public.

Mr. CLINK. Well, I am sorry, Mr. Chairman, I can not view it in that light.

The CHAIRMAN. I just wanted to get your views; that is all.

Mr. CLINK. They do not seem to view it in that light in Canada.

The CHAIRMAN. I do not know.

Mr. CLINK. You carry a passport and you get your ticket for transportation at a reduction.

Mr. BARKLEY. Mr. Clink, I would just like to make this observation in connection with your colloquy with the chairman with reference to establishing classes: Reference was made to the fact that this mileage book is not to be interchangeable.

Mr. CLINK. Yes, sir.

Mr. BARKLEY. And because it is not interchangeable it creates a class composed of those who have the mileage books. Is not that true of tickets you buy now from one place to another? They are not interchangeable.

Mr. CLINK. They are not transferable, either.

Mr. BARKLEY. So there is a class composed of those who are able to buy even one ticket.

Mr. CLINK. You are right.

Mr. BARKLEY. And the fact that other people besides traveling men would be permitted to buy these mileage books, if they are issued, would prevent the legislation from being class legislation, would it not?

Mr. CLINK. It seems so to me.

Mr. BARKLEY. In fact, if nobody but traveling men purchased them, notwithstanding others could do it, still it would not be class legislation.

Mr. CLINK. The ticket is open to the general public.

The CHAIRMAN. Mr. Barkley, will you kindly elaborate your idea about the nontransferable feature of a single ticket?

Mr. BARKLEY. I understand that a single ticket bought from one place to another is not transferable, and I understand that that is stated on the face of the ticket.

The CHAIRMAN. Do you mean that if I buy a ticket from here to New York I can not hand it over to you to use?

Mr. BARKLEY. I understand that the terms on the face of the ticket provide that it is not transferable. Most of the tickets I have bought recently have had on the face of them the fact that they are not transferable.

Mr. NEWTON. Mr. Clink, the ordinary purchaser of a ticket from a railroad company buys it under certain restrictions, does he not?

Mr. CLINK. Yes, sir.

Mr. NEWTON. And he buys it subject to those restrictions?

Mr. CLINK. Yes, sir.

Mr. NEWTON. Now, then, if these scrip books are subject to be purchased by any person who has the money to purchase them, there certainly is no discrimination in that particular instance, is there?

Mr. CLINK. Absolutely none, as I see it.

Mr. NEWTON. And the purchaser of the scrip book buys it subject to regulations and restrictions just like the purchaser of a ticket?

Mr. CLINK. Absolutely.

Mr. NEWTON. So that if the purchaser of a scrip book wants to avail himself of the use of it in travel he will have to conform to the restrictions and to the terms and provisions of the contract?

Mr. CLINK. Correct.

Mr. NEWTON. And so it is on a par with the purchase of a ticket?

Mr. CLINK. It is just the same.

Mr. NEWTON. If I purchase a ticket from here to the west coast and return, there are certain restrictions upon that ticket. I can not transfer it.

Mr. CLINK. No, sir.

Mr. NEWTON. I have got to go and have it validated at the end of the journey.

Mr. CLINK. Yes, sir.

Mr. NEWTON. So I can not see that there is any distinction between the scrip and individual tickets.

Mr. CLINK. There is none.

Mr. NEWTON. In principle?

Mr. CLINK. Absolutely none.

Mr. JOHNSON. Mr. Clink, under this bill the Interstate Commerce Commission would be required to order the railroad companies to issue mileage books on a just and reasonable rate. Now, the transportation act requires the Interstate Commerce Commission to fix such rates as will bring a fair, just, and reasonable return to the railroad companies. You understand that.

Mr. CLINK. Yes, sir.

Mr. JOHNSON. If we should enact this bill and not amend the transportation act, say section 15 of the transportation act, how would it help matters if the Interstate Commerce Commission is required to fix rates that will bring a just and reasonable return to the railroad companies on an \$18,000,000,000 valuation of the railroad companies?

Mr. CLINK. In answer to your inquiry, I should say that from my experience in traveling through the country—and I think all of you have had the same experience—the carriers would be making more money if they could fill their cars instead of running them half empty, and a reduced rate would certainly stimulate travel. The overhead for running a train is the same whether you fill it full or half full. There is very little difference. Now, you know and I know that the carriers' trains are running half full. Why? Because the rates are considered exorbitant and people will not travel.

Mr. JOHNSON. You no doubt know that the valuation as fixed by the railroad companies is \$18,000,000,000.

Mr. CLINK. Yes.

Mr. JOHNSON. And you no doubt know that investigation has shown that a reasonable and just valuation of the railroads would run from twelve to fifteen billion dollars.

Mr. CLINK. Yes.

Mr. JOHNSON. Do you think it is fair that this Congress should permit the Interstate Commerce Commission to continue to levy a rate or permit a rate to be charged that will produce to the railroad companies 6 per cent on \$3,000,000,000 of watered stock?

Mr. CLINK. No; watered stock is the curse of the country.

Mr. JOHNSON. Well, you admit the railroads are watered, do you not?

Mr. CLINK. Yes, sir.

Mr. JOHNSON. As a matter of common knowledge?

Mr. CLINK. Ruinously so.

Mr. JOHNSON. I want to say that I am going to support your bill, but I do not think you are going to get anywhere with it. However, I am going to vote for it.

Mr. CLINK. Of course, we appreciate the fact that the only question here is a question of authority in the Interstate Commerce Commission, and before them we will have to do our fighting, and we are willing to fight.

Mr. JOHNSON. How is that?

Mr. CLINK. I say what we want now is that if the commission has not the authority, give it to them.

Mr. JOHNSON. The transportation act gives the commission the exact authority that you are asking for here. The only difference is that the word "directed" is written into your bill here. They have the authority now. No gentleman who is informed will controvert that.

Mr. SANDERS. I will controvert it.

Mr. JOHNSON. I said "who is informed."

Mr. SANDERS. That is all right. You also said "gentleman."

Mr. JOHNSON. I said "No gentleman who was informed."

Do you remember what Senator Poindexter said last Monday, I believe, when he testified here? Senator Poindexter, who handled the bill in the Senate, admitted that the transportation act provided for the same thing that this bill provides for, except you use the word "directed" in this bill.

Mr. CLINK. Well, I am not a lawyer, and I am not here to discuss constitutional questions.

Mr. JOHNSON. It is not a question of the Constitution.

Mr. CLINK. I take my cue from the argument I heard in the Senate and from Senator Cummins's statement. Senator Cummins is considered the best authority, and the Senator stated positively that the commission had not the authority, and then it developed from other Senators who were present that they had investigated the matter and the Interstate Commerce Commission was equally divided as to their right or jurisdiction to grant what we asked. Now, what are we going to do?

Mr. SANDERS. May I suggest—

Mr. JOHNSON (interposing). While he is on the subject of Senator Cummins, let us talk about that.

Mr. SANDERS (continuing). That proves that Senator Cummins is not informed.

Mr. JOHNSON. Absolutely.

Mr. CLINK. He is said to be the best informed man in the country on such matters.

The CHAIRMAN. Mr. Clink, you admitted, perhaps inadvertently, I do not know, that regardless of the railroads' claim of valuation of \$18,000,000,000 that their real valuation was \$15,000,000,000, as brought out by my good friend here, Mr. Johnson. I would like to ask you on what authority you make the definite statement that \$15,000,000,000 should be the valuation and not \$18,000,000,000?

Mr. CLINK. I did not mention valuation.

The CHAIRMAN. No; but Mr. Johnson did, and you agreed.

Mr. CLINK. He said the stock was watered, and I admitted it.

The CHAIRMAN. Even so, he put definite figures in his statement and you agreed.

Mr. CLINK. I have not had the figures and I do not know anything about the figures.

The CHAIRMAN. Then, you do not want to agree to that?

Mr. CLINK. I was not agreeing to that, I was speaking to the general weight of his remarks.

The CHAIRMAN. And he got to be specific in stating the amount of the valuation.

Mr. CLINK. He said the stock is watered, and I say it is watered and ruinously so.

The CHAIRMAN. But are you prepared to substantiate the difference between \$18,000,000,000, as claimed by the railroads, and \$15,000,000,000, as he cleverly suggested.

Mr. CLINK. No; I would not make that statement, because I do not know.

Mr. BARKLEY. Mr. Chairman, I would like to make a slight correction in the statement I made a while ago when I suggested that all tickets had on their face the fact that they were not transferable. I had in mind tickets where the purchaser is required to sign something before he gets it. I do not think the ordinary little card ticket is nontransferable.

Mr. MAPES. Mr. Clink, if the Interstate Commerce Commission, in the case which it is now considering, should decide to reduce all passenger rates to 3 cents per mile instead of 3.6 cents per mile, is it your position that this mileage book should still be sold at a 25 per cent reduction from the 3 cents?

Mr. CLINK. No; I would hardly take that view, although I think that in purchasing large blocks of mileage, the purchaser should be entitled to something better than the rate for a single ticket. That is our position, and I believe we are right.

Mr. MAPES. If I understood you correctly, you go further than I have understood any other witness before the committee to go. Your statement, as I understood you, is that you should be allowed to buy a book at a 25 per cent discount.

Mr. CLINK. Yes, sir.

Mr. MAPES. And to use the scrip contained in that book not only for the payment of your railroad fare, but also in payment of excess baggage charges.

Mr. CLINK. Yes, sir.

Mr. MAPES. Why should you have that privilege? Why should you have the privilege of paying your excess baggage charges at 25 per cent under what other people have to pay?

Mr. CLINK. Because we contend that excess baggage charges are exorbitant. They are not equalized, and they should be lower.

Mr. MAPES. Are they any more exorbitant to you than they are to me?

Mr. CLINK. No; absolutely not, unless you have some favors.

Mr. MAPES. Are they any more exorbitant to one than they are to another?

Mr. CLINK. No, sir; not that I know of.

Mr. MAPES. Are they any more exorbitant to the man who has 8 or 10 trunks than they are to the man who only has one?

Mr. CLINK. No; he must pay the excess over 150 pounds.

Mr. MAPES. But he does not have the right to pay the charges for that excess at 25 per cent less than the regular charge.

Mr. CLINK. No, sir.

Mr. MAPES. And you think that the man who has six trunks should be allowed to do that.

Mr. CLINK. I think a man who has any excess baggage should be allowed the 25 per cent; that is, should pay his scrip the same as he does the cash.

Mr. MAPES. Suppose he does not travel much and has not a scrip book.

Mr. CLINK. That is his misfortune.

Mr. MAPES. Have you in mind exactly what the liberal concessions are that Canada gives to traveling men?

Mr. CLINK. It is about 1 cent a mile. They do not carry mileage books. They get their tickets right at the ticket office by carrying credentials showing that they belong to the Canadian association.

Mr. NEWTON. Mr. Mapes, the practice used to be, before the war, that you made arrangements with the association and you were given a card showing your membership, and you produced that card at the ticket window wherever you were, and upon that showing you would get your discount. That was the practice in western Canada before the war.

Mr. MAPES. Was that by virtue of a law or a voluntary practice of the roads?

Mr. NEWTON. I do not know. I know it was about 1 cent a mile or three-fourths of a cent a mile that we used to get.

Mr. MAPES. And that was given only to traveling men?

Mr. CLINK. Only to traveling men. They were the only ones who were entitled to get this identification card which was to be presented to the ticket agent. You signed for it and they compared the signatures.

Mr. HUDDLESTON. Mr. Clink, can you tell me the total cost to trade occasioned by the use of traveling salesmen for any given period?

Mr. CLINK. Can I give you the total?

Mr. HUDDLESTON. Yes.

Mr. CLINK. Of the trade transacted by the commercial travelers or of the money paid?

Mr. HUDDLESTON. Well, I would be glad to know the total amount of the trade, but I particularly want to know the cost to trade by selling through traveling salesmen, including the expense of the salesmen.

Mr. CLINK. You mean the expense of selling goods?

Mr. HUDDLESTON. Well, the expense of selling goods includes something more than the cost of the salesman. I want to find out what the cost to trade is in sending out traveling salesmen; just that feature of the cost. Have you any figures on that subject?

Mr. CLINK. No; I would not venture a statement at the present time.

Mr. HUDDLESTON. Is that information available?

Mr. CLINK. It is; yes, sir.

Mr. HUDDLESTON. Can you supply that?

Mr. CLINK. Yes, sir; I have some figures at home. I could give you those figures, I think, without any difficulty, and I can get you fresh figures from such houses as Marshall Field & Co.

Mr. HUDDLESTON. Then, for the same period of time, I would like to know the total amount paid to the salesmen for this same traveling. In other words, I want to find out what percentage of the cost of selling goods by traveling salesmen is occasioned by the expense of transportation by rail of the salesmen themselves.

Mr. CLINK. If you will give me your name, sir, I will send that to you.

Mr. HUDDLESTON. I will ask you to put the figures into the hearings, because others may have a similar interest. The information seems to be germane.

Mr. CLINK. Yes.

The CHAIRMAN. Can you tell the percentage of the cost of sending traveling salesmen out through the country, as represented by railroad fare? I know that will, perhaps, be difficult, but you may know the percentage.

Mr. CLINK. No; I can not answer that exactly. I could by consulting the figures I have in my office, but I did not bring those with me. I did not know it was necessary and I did not bring them.

The CHAIRMAN. Could you approximate it?

Mr. CLINK. No; I would not venture a guess on that.

The CHAIRMAN. In the absence of any further questions, the Chair will ask Mr. Murphy, the president of this same organization, to submit his statement now.

STATEMENT OF MR. WALTER D. MURPHY, PRESIDENT INTERNATIONAL FEDERATION OF COMMERCIAL TRAVELERS' ORGANIZATIONS, COLUMBUS, OHIO.

Mr. MURPHY. Mr. Chairman, as I understand the matter, you are discussing Senate bill 848 as it comes before you. On the matter of the constitutionality of the bill, you have heard better arguments than I could make, even if I had the audacity to attempt to argue its constitutionality.

I have been given to understand that it was decided in the Senate that the matter of the price of mileage could not be included in any law, and I am glad of it. I do not think it would have been fair either to the railroads or to the public to take snap judgment and fix a 25 per cent or 20 per cent reduction, or any other reduction, until both sides had had an opportunity to be heard by the Interstate Commerce Commission.

The railroads themselves, when they voluntarily issued an interchangeable mileage in the Central Passenger Association believed, I think, that 33½ per cent below the prevailing tariff was fair; at least, they issued it at that price and continued that for 10 years until the war came on.

We were informed when we had a conference with the passenger departments of the railroads in Chicago, a year ago last January, that they could not issue mileage books, because of the cost, because it was more expensive to the railroads to issue mileage tickets than the regular tickets. That argument I am not prepared to combat. Those gentlemen have the figures and are undoubtedly able to show you whether or not that is a fact. I can only argue from the standpoint of a business man who sees another business man pursuing a certain course for a given length of time, and believes it must be profitable to him or he would not continue it.

The railroads even kept the interchangeable mileage book on sale in the Central Passenger Association after the States of Ohio, Indiana, and Illinois had passed a maximum passenger rate of 2 cents, keeping them on sale at 2 cents also.

Mr. HOCH. Were those tickets good on all roads?

Mr. MURPHY. On all roads in the Central Passenger Association.

Mr. HOCH. Did that include practically all the roads or were there any considerable number that were not included in that association?

Mr. MURPHY. It included, as near as my memory serves me, all the roads in Ohio and Indiana and the eastern half of Illinois, with the exception of one or two short-line railroads. Those roads were not included.

Mr. SANDERS. Just for the record, I wonder if you will state just how those mileage tickets were sold, what reduction you got, and how it all worked out.

Mr. MURPHY. The tickets, as my memory serves me, were first issued in 1907 and were on sale at their ticket offices for \$30, with a rebate of \$10 when the cover of the book was turned in. Later the railroads changed that and made the price \$25 with a rebate of \$5.

Mr. MERRITT. How many miles for \$30?

Mr. MURPHY. One thousand miles. The tickets were usable through the ticket offices. You went to the ticket agent and exchanged your mileage slips for a train ticket.

Mr. SANDERS. Did it always cover the same number of miles or did the price of the ticket have something to do with it? For instance, if you were in a State where they had a 2-cent rate, would you pay the same as when you were in a State where they had a 3-cent rate?

Mr. MURPHY. Yes, sir; because the price was based, I think, on a 3-cent local tariff rate, and the roads gave the reduction of 1 cent a mile to 2 cents a mile.

Mr. SANDERS. Where the regular fare was 2 cents, it did not amount to any reduction at all.

Mr. MURPHY. No, sir.

Mr. SANDERS. In other words, those mileage tickets provided for a uniform cost per mile.

Mr. MURPHY. Yes, sir.

Mr. SANDERS. Just like the present bill provides.

Mr. MURPHY. Yes, sir; just as the wording of the present bill.

Mr. SANDERS. And the reduction was based upon the maximum charge per mile.

Mr. MURPHY. Yes, sir.

Mr. SWEET. And you purchased a regular ticket in all travel, too, in connection with this mileage, did you not?

Mr. MURPHY. Yes, sir.

Mr. SWEET. Just as an ordinary traveler purchased his ticket, except that you bought it upon the basis of this mileage book or scrip.

Mr. MURPHY. The only difference was that you gave scrip or gave mileage slips and the other man gave cash.

Mr. NEWTON. You paid the mileage to the conductor. You did not turn the mileage in to the ticket agent.

Mr. MURPHY. Yes, sir; we turned the mileage in to the ticket agent and obtained from him a train ticket.

Mr. NEWTON. Is that so? That never was the practice out in my country. The mileage was turned right over to the conductor and then was torn off right in the coach.

Mr. MURPHY. That was the practice in the Central Passenger Association until the interchangeable book came into effect. Prior to that we bought a mileage book for \$20 flat that we used on the train, and the conductor tore out the number of miles you desired to travel, but when this interchangeable book was put on the market, it contained a provision that you must purchase a ticket from the ticket agent.

Mr. SANDERS. Mr. Murphy, you have no doubt studied this bill pretty carefully. What, in your opinion, will be the effect of the passage of this bill—to provide for an interchangeable mileage book such as the one you have described, where the payment will be the same per mile on all the roads?

Mr. MURPHY. My understanding of the bill, as I have read it, is that the matter of rules and regulations for the use of the mileage are to be provided by the Interstate Commerce Commission. I would judge that in formulating those rules and regulations the Interstate Commerce Commission would be compelled to take into account every difference in tariffs that might exist, and that a road which had a tariff of 5 cents a mile should certainly be entitled to a greater number of strips, or whatever procedure there may be, than would a road with a 3.6-cent tariff.

Mr. SANDERS. It is your idea that that is the thing that ought to be accomplished, at least.

Mr. MURPHY. That is what I should think ought to be accomplished.

Mr. SANDERS. And if the bill does not make that clear, you would want an amendment so as to make it clear that these tickets were not necessarily to be at a uniform rate throughout the country.

Mr. MURPHY. I should think so; yes, sir. If you will permit me, right on that line, it seems to me that if this bill—and, as I said in the beginning, I do not feel that I am qualified to discuss the constitutionality or the question of

whether it does or does not do so—but if the bill as it is written now only provides that these tickets could be used in interstate transportation, it seems to me that, both for the benefit of the railroads and their patrons, it should be amended to provide that it is good for intrastate as well as interstate travel, because any user of a mileage book would necessarily want to use the book for intrastate travel more times than he would want to cross a State line.

The suggestion was brought out here, I think, that in the matter of expenses the consumer paid the bill. I guess it is a general rule of business that all costs in the purchase and sale of goods are to be considered as costs with profit added to it, and yet there comes a time when the cost of the sale of goods becomes so great that the consumer refuses to buy, and that condition has confronted a number of lines within the past two years. Notably, the clothing line and the shoe line have found that they could not put all the cost on the consumer or else the consumer would not buy the goods, and it is along that line that the merchants, jobbers, manufacturers, and their employees, and the salesmen, feel that that line has been passed in the cost of transportation, both of passengers and freight. However, it is only the passenger traffic that we have any opportunity to discuss or any reason to discuss at this time.

Mr. HAWES. May I interrupt with a question? You believe that the rates for the whole country should be controlled by the Interstate Commerce Commission, do you not?

Mr. MURPHY. I believe that is the only way of having them controlled at this time; yes, sir.

Mr. HAWES. You think it would be unfortunate if the railroad commissions of 48 States should attempt to control part of the passenger rate and the national Government control another portion. Would it not create great confusion for the traveler?

Mr. MURPHY. I believe it would.

Mr. HAWES. Do you think then as the president of an organization representing some 600,000 men that it would be unfortunate to divide the rate-making program of the country into 48 sections or that it ought to be left entirely to the national commission?

Mr. MURPHY. I think it would stabilize business if it were left in the hands of one national commission.

Mr. HAWES. You believe that is the view of your entire organization?

Mr. MURPHY. Yes, sir; I do.

Mr. BARKLEY. Do you mean by that, Mr. Murphy, that if the interstate passenger rates are fixed at 3½ or 4 cents a mile by the Interstate Commerce Commission that no State commission ought to be allowed to reduce the passenger fare within a State to anything less than that? Is that what I understand you to mean?

Mr. MURPHY. I hope not. I did not mean that. I meant what I said, that I think where it is in the hands of one central body, it stabilizes business. If that central body puts rates at such a figure that they become practically prohibitive, to the residents of any sovereign State, I believe that State should have some jurisdiction.

The CHAIRMAN. How do you think that could be worked out, Mr. Murphy. That would make the local boards rather superior, in the matter of final authority, to the national body, would it not?

Mr. MURPHY. I am not prepared to go into the details, Mr. Chairman, of how it should be handled.

Mr. JONES. Is not your answer to that, that the personnel of the Interstate Commerce Commission would have to be changed.

Mr. MURPHY. I thank you, sir. That is a good answer, anyway.

Mr. JONES. Is not that the only way it could be done?

Mr. MURPHY. The only way I would know of.

The CHAIRMAN. Do you still stick to the idea that if the Interstate Commerce Commission did not arrive at a level of rates satisfactory to the people of any State, that at that point the jurisdiction should cease and the State Commission should proceed to have authority to act?

Mr. MURPHY. Well, they should have some board of arbitration, anyhow, they could go before.

The CHAIRMAN. If they did have that arrangement, that would forthwith mean that overnight there would be 48 boards proceeding forthwith to reorganize the schedules.

Mr. MURPHY. I do not think so, if the Interstate Commerce Commission would act, and act fairly.

The CHAIRMAN. But do you think the people of any State would ever agree that they ever acted fairly if there was even a chance to appeal, with final authority in their own State boards?

Mr. MURPHY. Yes; I do.

The CHAIRMAN. That is interesting.

Mr. MURPHY. I have faith in the American people, in their honor and honesty.

The CHAIRMAN. Oh, yes; but they have different viewpoints.

Mr. MURPHY. I believe they would not appeal from a decision they believed was fair and equitable. I think in the case of my own State, the State of Ohio, we were justified in appealing against the decision of the Interstate Commerce Commission, which said that an intrastate road doing business in the State only was not amenable to our public utilities commission, but we got licked.

Mr. HAWES. Of course, Mr. Murphy, you understand you could not get an interchangeable mileage book under the authority of a State commission, at any time.

Mr. MURPHY. No, sir; it would be impossible.

Mr. HAWES. And if we built walls around the States like they had walls around China, if the commercial traveler would have to stay in his own State and could not cross the State line, they would not do much business.

Mr. MURPHY. Not very much.

Mr. HAWES. So it is a national problem, to be handled by a national tribunal, and that is what you want.

Mr. MURPHY. Yes, sir. The suggestion was made or the question was asked in reference to the use of automobiles by commercial travelers. The use of automobiles has increased tremendously in the past few years for the use of jobbers' salesmen covering restricted or closely knit territories; and from the statements made to me the reason for that is not because the houses prefer it or because the men prefer it but because they can cover a closely built territory more cheaply than they can under the present transportation rates.

The CHAIRMAN. Mr. Murphy, do you not think that one of the great inducements for that system of travel bears directly on the ease with which the salesman can go from one customer to another within the territory, quite as much as on the question of transportation from one municipality to another.

Mr. MURPHY. I am not able to answer that except as I have stated. I have been told it was because of the fact that they could handle their men cheaper.

The CHAIRMAN. I think that is true; but if a man goes to Cleveland, to illustrate, or to some more inland place than Cleveland, and wants to run around in a day to six towns and call on 16 people, he can do that in a day, whereas by train transportation he never can do it in a day, and I think that element is being regarded as one of the savings quite as much as any saving in transportation between Cleveland and Cincinnati or Chillicothe or any other place you may go.

Mr. MURPHY. That is true.

The CHAIRMAN. It is a daily saving in such running about.

Mr. MURPHY. That is true where you are working small towns. You do now what you did in the old days with horses and buggies. You make such towns not by the railroads because you can not.

The CHAIRMAN. Exactly.

Mr. MURPHY. You could not make it by the railroads if the price was one-half of a cent a mile.

The CHAIRMAN. Quite so.

Mr. MURPHY. But they are using them on more extended trips because of the difference in rates; at least, that is the information I get.

I think the question was asked here as to the ratio of the cost of transportation for a commercial traveler in comparison with the entire amount of his expense; and may I say that I doubt if it would be possible to get any definite figures along that line taken as a whole because various lines cost various amounts. The grocer, for instance, carries no baggage, covers his territory rapidly, perhaps, and uses twice the mileage that a dry goods man would use. The boot and shoe man, coming in between, does not carry as much baggage as the dry goods man, but must get over more territory. I can say, as a drug salesman, that the cost of transportation to-day represents between 25 and 28 per cent of the total cost or expense of the men on the road.

Gentlemen, I do not know that I have said anything that was worth while, and I do not know that I can say anything more that would be of interest to the committee.

Mr. LEA. Are there any statistics available to show the probable aggregate volume of business handled through commercial travelers?

Mr. MURPHY. None that I know of. There would have to be a tabulation of the various lines in order to enable you to reach a conclusion as to that.

The CHAIRMAN. We are very much obliged to you. In the ordinary running arrangement of the committee, it would seem that this concludes the hearing of those who asked to be heard in favor of the bill, and on Tuesday morning we will proceed to hear those who are opposed to the bill.

The chairman would like to have the reporter embody in the record that the National Association of Men's Apparel Clubs, with headquarters at 1725 North Thirty-third Street, Philadelphia, has been represented here by Mr. Lippman E. Hess, and they desire to be recorded in favor of S. 848. If there is no objection, we will adjourn until 10 o'clock next Tuesday morning.

(Thereupon the committee adjourned to meet Tuesday, March 28, 1922, at 10 o'clock a. m.)

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,**
Tuesday, March 28, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. We will proceed with the consideration of S. 848. By arrangement, those who are not in favor of the bill under consideration were to begin to present testimony this morning, and the chairman would like to ask whether such persons have made any arrangement as to the order of procedure with reference to the witnesses. Can anyone speak for them?

**STATEMENT OF MR. ALFRED P. THOM, ATTORNEY AT LAW,
WASHINGTON, D. C.**

Mr. THOM. Mr. Chairman and gentlemen, the committee will, of course, appreciate from the record made before the Senate committee that the carriers are opposed on principle to legislation of this nature and do not regard it as wise public policy, but they do not desire to be contentious about it.

We suppose it will be in accordance with the wishes of the committee, and we feel it somewhat of a duty to furnish the committee as a matter of information and not as a matter of contention with the best thought and the results of the best study that men who have devoted their lives to this subject have been able to develop.

We shall confine our testimony to a single witness. I am speaking now for the carriers that I represent. I am not speaking for the short-line railroads; but the carriers whom I represent, who are practically, with a few exceptions, all of the class 1 railroads of the country, we will, through the mouth of Mr. Bevington, who is the chairman of the Transcontinental Passenger Association, give the committee the result of the study of this passenger problem, and then we shall submit it to the judgment of the committee, without argument and without contention, realizing that you will take everything under consideration and will reach the conclusion that you think is best for the country.

I feel it my duty, however, to read one letter into the record which I received from a gentleman with whom I have not been able to have any conference. He is the general counsel of the Bangor & Aroostock Railroad Co., Mr. Henry J. Hart. It is dated March 23, 1922, and is addressed to me.

"I have yours of the 19th instant in reply to mine of the 15th relative to the mileage book bill.

"Passage of this bill would have a very disastrous effect on the passenger revenues of this company. As you know, we traverse a very sparsely settled territory, and our passenger trains are run as a matter of public convenience, not as a matter of profit; in fact, it is generally admitted that we give more passenger service than the travel justifies, it being given on the ground of public convenience rather than public necessity. Our operating expenses, divided and allocated in accordance with the rules of the Interstate Commerce Commission, show that passenger transportation is conducted at a loss, and the operating ratio (making no allowance whatever for interest or return on the investment) has run from 108 to 110 per cent.

"Our passenger rates always have been higher than those of other carriers in New England, recognizing, of course, the sparsely settled territory and the

is subject to increase from the present rate of 10 cents per mile to 15 cents per mile. The purpose of the proposed increase is to provide additional revenue to meet the increased cost of operation.

The proposed increase would affect all classes of traffic, including passenger and freight. It is estimated that the proposed increase would result in a loss of approximately \$125,700,000 for special traffic, which would be reduced through the sale of 10-cent-mile tickets, sold at rates below the regular 10-cent-mile ticket. If a 10-cent-mile ticket is sold at a

reduction of 20 per cent, which would make the net rate per mile 2.88 cents, we estimate that of the \$1,000,000,000 25 per cent would be affected. If this is reduced 20 per cent, the loss to the carriers would be \$50,000,000 annually. If a 1,000-mile ticket is sold at a reduction of 30.5 per cent, which is the percentage represented by the difference between the basic rate of 3.6 cents per mile and 2.5 cents per mile, we estimate that the loss to the carriers would be \$137,250,000 annually.

If a 3,000-mile ticket is sold, we estimate that the loss would be \$30,000,000 annually if the reduction is 20 per cent, and that it would be \$76,250,000 annually if the reduction is 30.5 per cent.

If a 5,000-mile ticket is sold, we estimate that the annual loss to the carriers would be \$20,000,000 if the reduction is 20 per cent, and that the annual loss would be \$38,125,000 if the reduction is 30.5 per cent.

Mr. HOCH. I did not understand whether you stated at the beginning, in giving those estimates, what percentage you estimate of the traffic will be upon mileage books.

Mr. BEVINGTON. First, we estimate the amount of the business or the percentage of the \$1,000,000,000 that would be affected by selling the mileage tickets of these denominations. Of course, we estimate that if a 5,000-mile ticket is sold, the effect will be less on the revenues of the carriers than if a 1,000-mile ticket is sold.

Mr. HOCH. What percentage of the traffic do you figure will be on mileage books? The fact that a mileage book is sold, you do not think will cause everybody to use mileage books?

Mr. BEVINGTON. No.

Mr. HOCH. I am trying to get the basis upon which you figured.

Mr. BEVINGTON. I stated in connection with the 1,000-mile ticket that if a 20 per cent reduction is made on a 1,000-mile ticket that 25 per cent of the \$1,000,000,000, or \$250,000,000, would be affected.

Mr. HOCH. That is to say, 25 per cent of the traffic would be upon mileage books?

Mr. BEVINGTON. Yes, sir; that is what we estimate.

Mr. BURBOURGS. Would that same percentage apply to the 3,000-mile ticket and the 5,000-mile ticket?

Mr. BEVINGTON. No; we estimate the higher the denomination the less the effect would be. We estimate that if a 3,000-mile ticket is sold at a 20 per cent reduction, 15 per cent would be affected as against 25 per cent on a 1,000-mile ticket; and that if a 5,000-mile ticket is sold at a 20 per cent reduction, 10 per cent of the traffic would be affected as against 25 per cent on the 1,000-mile ticket and 15 per cent on the 3,000-mile ticket.

The CHAIRMAN. To clear that up, is it fair to assume that that difference will be due to the inability of people to buy the books of the higher denomination?

Mr. BEVINGTON. Yes, sir.

Mr. HUDDLESTON. Upon what information are those estimates based?

Mr. BEVINGTON. They are based upon what happened to us in previous cases in which reductions were made in restricted territories where the mileage tickets in many cases were confined to single lines or honored only on single lines, and in other cases where they were honored on groups of lines, and in other cases where they were honored in a given territory, for instance, in the territory east of the Mississippi River and south of the Ohio and Potomac Rivers. We have had experience in all those cases, so that we know what happens where reductions are made and confined to mileage tickets issued by single roads and honored only by the road issuing them and where they are honored by the issuing roads and other roads in that group, and where they are honored in a given territory and made interchangeable.

Mr. HUDDLESTON. Do you estimate that the use of mileage books will be greater if a universal mileage book is put in than it was when mileage books were previously used?

Mr. BEVINGTON. Oh, yes, sir.

Mr. HUDDLESTON. How much greater do you consider that mileage books will be used by passengers if they are made good universally, above the use of mileage books when they were previously issued by individual carriers and groups of carriers?

Mr. BEVINGTON. We conservatively estimate that it would double the use of these tickets. I will give you some figures on that a little later on.

Mr. HOCH. In your estimates you do not figure anything for the possible increase in the volume of traffic. You simply take the basis of the same volume and figure that a certain percentage of travelers would use the mileage books?

Mr. BEVINGTON. Yes, sir; we have discounted the increased travel, and I will show you a little later on what happens in that connection based upon practical experience. While it is impossible to accurately measure the effect of a reduction for an interchangeable mileage ticket good on all railroads in the United States, since there has been no analogous situation in railroad history, some years ago when there was a substantial reduction from the basic rate per mile, and the rate for mileage tickets was 2 cents per mile, even though the mileage tickets were restricted in smaller territorial limits and were not interchangeable as between all lines in the same territory, an average of not less than 20 per cent of the total passenger traffic of the country moved on mileage tickets; in fact, in some territories as high as 60 per cent of the total passenger traffic moved on mileage tickets.

Confirming these statements, the records show that for the fiscal year ended June 30, 1917, when the basic rate was 2½ cents per mile and the mileage ticket rate was 2 cents in the southeastern territory, which is the territory east of the Mississippi River and south of the Ohio and Potomac Rivers, the mileage ticket was used by the major portion of the traffic moving between principal commercial centers, as illustrated by the following:

- Between Jacksonville, Fla., and Washington, D. C., 85 per cent.
- Between Cincinnati, Ohio, and Tampa, Fla., 95 per cent.
- Between Tampa, Fla., and New Orleans, 80 per cent.
- Between Washington, D. C., and New Orleans, La., 93 per cent.
- Between New Orleans, La., and Jacksonville, Fla., 60 per cent.
- Between Louisville, Ky., and Memphis, Tenn., 68 per cent.
- Between St. Louis, Mo., and Memphis, Tenn., 47 per cent.
- Between Memphis, Tenn., and Vicksburg, Miss., 50 per cent.
- Between New Orleans, La., and Memphis, Tenn., 60 per cent.
- Between Washington, D. C., and Raleigh, N. C., 53 per cent.
- Between Cincinnati, Ohio, and Raleigh, N. C., 72 per cent.
- Between Washington, D. C., and Savannah, Ga., 71 per cent.

I am attaching to this statement an exhibit showing additional information on this point as between other terminals and principal points in the Southeast.

If a joint interchangeable mileage ticket of the character proposed, involving universal acceptance by all carriers and a wider difference between the normal fare and the mileage ticket fare is adopted, a very much larger percentage of the passenger traffic will be handled on that form of transportation.

Assuming for the sake of argument that an interchangeable mileage ticket is placed on sale at 2½ cents per mile or at any substantial reduction from the basic rate, and is available to the general public, it will be used to defeat the published local and interline one-way fares as well as tourist fares generally throughout the United States, I will give you a few examples:

If a 1,000-mile ticket is sold at 2½ cents per mile, for example, and is used by a one-way passenger between Chicago and New York, the loss to the carriers would be \$10 per ticket. This is determined as follows: Normal one-way fare, Chicago to New York, \$32.70; mileage fare at 2½ cents per mile, \$22.70; difference, \$10. The value of the unused mileage in that case is \$2.30. In other words, the distance between Chicago and New York is 912 miles. By buying a 1,000-mile ticket, the passenger could save \$10 on the Chicago-New York fare and still have \$2.30 worth of transportation left in his book for use between other points.

Mr. WEBSTER. Mr. Bevington, a moment ago you said you had discounted the idea that this reduction would stimulate travel or increase its volume. Do I understand by that that the charge for transportation is not reflected in the volume of travel?

Mr. BEVINGTON. The charge for transportation?

Mr. WEBSTER. Yes. If a 20 or 25 per cent reduction would not stimulate travel, what reduction would stimulate it?

Mr. BEVINGTON. We do say that when you make an excursion rate on a given day to a given point for a given purpose and advertise it, and make the reduction sufficient, that that stimulates travel, but when you reduce your basic rate, the stimulation of travel is almost inappreciable.

Mr. WEBSTER. Suppose we reduced it 50 per cent, would that have any effect on the volume of passenger travel?

Mr. BEVINGTON. I imagine not, to any great extent, for the reason that years ago when we reduced the fares within the States under State legislation from 3 cents to 2 cents per mile, or 33½ per cent, the stimulation was continued for only about three months, and was very small as to percentage.

Mr. WEBSTER. In other words, it is your experience that just as many people use passenger trains when the rate is high as when the rate is low?

Mr. BEVINGTON. I would not say that exactly, Judge. The use of a lower rate—that is, a mileage rate—will increase our passenger miles, but in the long run it does not increase our revenue and bring us the same net revenue we had before the reduction was made. I am referring now to the basic rate.

Mr. WEBSTER. That is getting away from the proposition. I was asking what effect the reduction would have on increasing the volume of travel and not the net result. Would not more people, in the ordinary probabilities, travel if rates were low than if rates were high?

Mr. BEVINGTON. I think they would.

Mr. WEBSTER. Is not that especially true of passenger travel where a considerable portion of it is what we call voluntary travel, where people may go or stay at home as they please, without serious inconvenience?

Mr. BEVINGTON. Yes.

Mr. WEBSTER. Well, I would like to know whether there is a point beyond which one is required to go in the reduction before there is any appreciable increase in the volume of business. You tell me 20 or 25 per cent will not have any effect at all, but can you suggest any per cent that would have any effect?

Mr. BEVINGTON. Not as to the basic rate, because there is a wide difference between reducing your basic rate and making a temporary excursion rate. If a man knows he can travel to-day or to-morrow or next week or next month one way, at the same rate, that it is available at any time, it does not tend to induce him to go to-day or next week, but he will wait a month or will await his own convenience. It does not stimulate travel in that sense when you reduce your basic rate. The excursion and convention rates are a different proposition and your tourist rates to your resorts are a different proposition. They do stimulate travel; but when a man knows he can get the same rate to-day or next year, he has no incentive to travel immediately or until necessity or his own pleasure requires it or suggests it. I am speaking now of the basic rate per mile, and as you will see from these figures, if a mileage ticket of this character is adopted, you are practically legislating on the basic rate per mile in this country.

Mr. HUDDLESTON. Do I understand, Mr. Bevington, that you hold to the view that those who want to use passenger trains will use them whether the rate be high or low?

Mr. BEVINGTON. Well, no; I do not think that is quite so. I think that a low rate does stimulate some travel, but I always make the distinction between your basic rate, your one-way rate.

Mr. HUDDLESTON (interposing). Leaving out the question of special rates and referring to the basic rate for the moment, do you hold that a reduction in the basic rate does not increase travel?

Mr. BEVINGTON. No; I do not.

Mr. HUDDLESTON. What is your view on that subject?

Mr. BEVINGTON. It would stimulate the travel somewhat, but not to any great extent.

Mr. HUDDLESTON. Well, the degree of stimulation would depend entirely upon various factors, such as the extent of the reduction, business conditions, the ability of the people to pay fares at all, and various other things would affect the degree of the increase?

Mr. BEVINGTON. Yes, sir.

Mr. HUDDLESTON. That is obvious.

Mr. BEVINGTON. Yes.

Mr. HUDDLESTON. And, of course, it is obvious that a reduction in the cost will affect the amount of transportation that people use, just the same as a reduction in the cost of food will affect, in a degree, the amount of food that people use. People do not buy as much bread when it is high as they do when it is cheap, but being one of the staple necessaries of life, and therefore to a much greater extent would that be true of transportation. Do you not think that is so?

Mr. BEVINGTON. Yes, sir; I think it depends upon economic conditions generally, and I know that during the war when everybody had plenty of money

it did not make any difference about the rate. Thousands of people took our trains and did not have any objective when they got on the train. They just got on to ride, because they had plenty of money. Money was coming freely in those days. Of course, it depends upon economic conditions. It depends upon whether people are in the mood of saving and being frugal or whether they are profligate, and the volume of railroad transportation can be measured by expenditures for other necessities.

Mr. HUDDLESTON. The issuance of free passes greatly stimulates passenger traffic, does it not?

Mr. BEVINGTON. Well, I think it did, in the old days.

Mr. HUDDLESTON. Does it not now and at all times? People travel on passes who will not pay or are unwilling to pay their fares.

Mr. BEVINGTON. I do not understand that anybody travels on passes nowadays except railway employees.

Mr. HUDDLESTON. Employees and their families comprise millions of people. I find in traveling that sometimes half of the people in the coach are using passes.

Mr. BEVINGTON. I can only judge by myself.

Mr. HUDDLESTON. I recognize the fact that many of these are people who would not travel if they had to pay their way.

Mr. BEVINGTON. I have a good many annual passes in my pocket, but I do not recall having taken a trip, except on business, within the last 10 years.

Mr. HUDDLESTON. I would not say that you belong to the class who travel only when they have passes. Undoubtedly, however, a vast majority of the people would travel if they are given passes when they would not travel if they did not get them.

Mr. BEVINGTON. I imagine that if the railroad carriage was free that we could fill our trains. If we made the rate one-half cent or 1 cent possibly a lot of people would go on a ride, just as they did during the war, but that does not save us. We could not afford to do that.

Mr. COOPER. A few moments ago you gave us the present rate between New York and Chicago. May I ask you what that was?

Mr. BEVINGTON. \$32.70.

Mr. COOPER. And with a 1,000-mile book how much did you say that would be?

Mr. BEVINGTON. \$22.70.

Mr. COOPER. And if the carriers were required to sell the 1,000-mile book you say there would be a loss of revenue to the carrier of about \$10 a trip?

Mr. BEVINGTON. Yes.

Mr. COOPER. What percentage of increase in passenger travel would you have to have to make up that \$10?

Mr. BEVINGTON. We think that figures about 43 per cent.

Mr. COOPER. Forty-three per cent?

Mr. BEVINGTON. Yes, sir.

Mr. COOPER. You have no idea how you would get the 43 per cent of increase?

Mr. BEVINGTON. We have an idea that we would not get it, or anywhere near it, or one-half of it.

The CHAIRMAN. Does that include a proper allowance for all the charges that enter into the transportation cost when you say 43 per cent increase; will that take care of carrying the passengers at that rate?

Mr. BEVINGTON. No. This is not a question of cost; it is a question of revenue.

The CHAIRMAN. I think Mr. Cooper may have had in mind to ask you how many more people on the roads between Chicago and New York the railroads would have to carry in order to break even. It would have to be more than 43 per cent?

Mr. BEVINGTON. We would have to carry seven instead of five. We would have to carry 40 per cent more.

The CHAIRMAN. Is that right?

Mr. BEVINGTON. Yes, sir. We would have to have one additional passenger for every—

The CHAIRMAN (interposing). You might have to have an additional car also, which would increase your operating expense?

Mr. BEVINGTON. Yes, sir.

The CHAIRMAN. You would have to have an additional brakeman, who would increase your operating expense. You would have additional wear and tear on everything that went into transportation, trackage, cars—everything?

Mr. BEVINGTON. Maintenance of way.

THE CHAIRMAN. Everything that goes into the cost of transportation. So the 43 per cent increase would leave the carriers as well off if they did not have that deduction made at all?

MR. BEVINGTON. No; it would not, Mr. Chairman. They can not carry 43 per cent additional without some additional cost.

THE CHAIRMAN. That does not answer the question so that the committee, Congress, and the public may know the real facts. Are you not obliged to have some kind of cost computation taking into consideration in this matter in order to show how many more passengers you will have to have before you will have made up the \$10 you have referred to?

MR. BEVINGTON. We would have to increase the revenue 40 per cent, and therefore would have to have two passengers additional for every five we now move.

THE CHAIRMAN. That is taking in the base cost or just the return?

MR. BEVINGTON. The return.

THE CHAIRMAN. That is another matter. That is all right for the fellow who buys a ticket, but where will the railroads get off?

MR. BEVINGTON. I will touch on that a little later if you will permit me.

MR. COOPER. Could you increase the passenger travel without disorganizing the present passenger schedule of trains? Are not most of the trunk lines between New York and Chicago running as many passenger trains as they can possibly run; could they put on more trains to carry passengers?

MR. BEVINGTON. I think they could. I think we should have to have some additional equipment if we increased our business 43 per cent, plus an additional unknown percentage that would give us some profit, if there is a profit.

MR. COOPER. That would materially, of course, affect your freight-carrying transportation; the more passenger trains you have on the line it would interfere some with your transportation of freight, would it not?

MR. BEVINGTON. Naturally.

MR. WEBSTER. The fundamental thought that I had in mind a moment ago is this: We have been told here repeatedly by competent experts that in the process of increasing rates you may strike a point of diminishing returns where a further increase of rates will not increase the revenues, for the reason that the volume of the movement will be depressed. It is a little difficult for me to understand how an increase of rates may retard the movement, but a decrease of rates will not stimulate it?

MR. BEVINGTON. It may be that the rate you are trying to increase is the proper average rate that will produce the best results, whereas if you increased it it would make it prohibitive. That is so, but a reduction in rates does not always stimulate traffic. We have found that out to our sorrow.

MR. MAPES. Does your estimate apply as well to local traffic as to long-distance traffic; do you think the same percentage of increase or decrease in travel would hold good if you reduced the local rates?

MR. BEVINGTON. Between short points?

MR. MAPES. Yes, sir.

MR. BEVINGTON. Of course, there is a difference in that. The local traffic is one thing and the through long-mileage travel is another.

MR. MAPES. Would not there be a great deal more local traffic if people could ride for 2 cents or 2½ cents?

MR. BEVINGTON. That has not been our experience. I am going to show you where a railroad made a reduction in rates of 33½ per cent in a State, and where it only increased the traffic in a year 2.3 per cent. That took in all local business in the State. That is one railroad that was typical of all.

MR. HAWES. Before we get away from the question which has been asked. I understand that passes on the railroads are now limited to employees of the railroads?

MR. BEVINGTON. Yes, sir.

MR. HAWES. In other words, it is the same policy followed by the United States Government in the payment for the movement of its employees, soldiers, and sailors, and is done by commercial houses which give tickets to their employees on the railroads. As the matter of the number of passes has been interjected into other hearings as well as this one, I want to be quite clear that passes now are issued only to employees of the railroads; in other words it is for railroad purposes that they are issued?

MR. BEVINGTON. That is my understanding.

THE CHAIRMAN. Will you accept a little information on that subject?

MR. HAWES. I shall be very glad to have it.

The CHAIRMAN. While what you say is technically correct, from a straight point of fact it is most incorrect, for this reason, that there are through the country tens of thousands of reputed lawyers who are retained in every cross-roads town where there is a courthouse to defend the interests of the railroads, and they demand passes from those roads and get them. Sometimes they ride once or twice a year in the interest of the railroads, and every day they ride for some other purpose, but they are classified as employees. The same thing is true of doctors who on the strength of being ready to serve in an emergency are given passes. In wrestling with the transportation act two years ago that was a question very much discussed, and finally in an amendment to the act they cut out all of those people and cut out the families and a lot of railroad employees. They would get passes from Philadelphia and go clear across the country, clear down to Texas and across the South and up back to Philadelphia, families and all. There was such a tremendous howl that it became apparent that such a provision would never go through either branch of Congress. Members came rushing in almost in droves to object to it, because these lawyers, etc., did not render service to the railroads, yet counted so many votes at the election. There was nothing to compare with it. It was wiped out.

Mr. HUDDLESTON. I want to ask a question in line with the question asked by Mr. Cooper and the chairman a few minutes ago. Have you any information as to the extent that the passenger-carrying capacity is actually taken up by passengers upon the trains which the railroads actually operate at the present time?

Mr. BEVINGTON. You mean the average number of passengers per car or per train?

Mr. HUDDLESTON. Yes; or the average percentage of use of passenger facilities.

Mr. BEVINGTON. The commission's report shows that the average number of passengers per car is about 16.

Mr. HUDDLESTON. What is the average car capacity?

Mr. BEVINGTON. I can not state that. They vary all the way from 25 to 80.

Mr. HUDDLESTON. So that it would be fair to say that the capacity is not being used as much as 50 per cent at present?

Mr. BEVINGTON. It is not being used on the heavy trains. We have trains on which we can not carry any additional travel.

Mr. HUDDLESTON. I am speaking of the average use the country over.

Mr. BEVINGTON. But, of course, the average does not do any good. If they come to the Century in Chicago and it is filled and 25 additional passengers want to take passage on it, they either have to put on an additional car or run a second section. The average does not work out in that case.

Mr. HUDDLESTON. If the 43 per cent additional business which you say will be required if a 25 per cent reduction in fares is made could be distributed over the roads, no increased facilities or increased operation cost would be involved in carrying the increase; that is obvious?

Mr. BEVINGTON. That would be an ideal condition if it could be accomplished, but we have no control over it.

Mr. HUDDLESTON. Of course, I realize that it can not be done except to a degree; but assuming that it can be, it is obvious that no increased expense to the carriers would result from the increased business. Is not that a fact?

Mr. BEVINGTON. If we could increase business exactly 43 per cent, possibly that might be done.

Mr. HUDDLESTON. It would not have to be exactly 43 per cent; you could increase it twice 43 per cent?

Mr. BEVINGTON. I do not know; I do not think so.

Mr. HUDDLESTON. Without any increased facilities?

Mr. BEVINGTON. No; I do not think so. I do not know of any case where you could increase business 86 per cent without additional facilities.

Mr. HUDDLESTON. I travel on the trains a good deal. Of course, I can not say that the trains are typical, but I observe that the trains usually carry something like one-half or one-third of their passenger capacity. I speak merely from observation; that is the basis of my question.

Mr. BEVINGTON. Of course, there is no way of regulating that.

Mr. JOHNSON. Are the railroads losing money on the passenger business?

Mr. BEVINGTON. They are not earning what the transportation act contemplated.

Mr. JOHNSON. How does that compare with this time last year?

Mr. BEVINGTON. Well, I think the earnings are less this year than last.

Mr. JOHNSON. And getting less all the time?

Mr. BEVINGTON. I would not say all the time.

Mr. JOHNSON. At present they are less than they were last year?

Mr. BEVINGTON. I think that is true.

Mr. JOHNSON. What are the railroad companies doing to stimulate business and to reduce the cost of operation?

Mr. BEVINGTON. I am not in the operating department, and, of course, I do not know what they are doing.

Mr. JOHNSON. May I ask you, with courtesy, what you do for the railroad companies? You are employed by them to come here and give this testimony. In what capacity are you serving the railroad companies?

Mr. BEVINGTON. I am chairman of the Transcontinental Passenger Association, consisting of 56 western railroads west of Chicago, St. Louis, Memphis, and New Orleans.

Mr. JOHNSON. May I ask what are your duties?

Mr. BEVINGTON. My duties are to promulgate questions of common interest, to publish tariffs, to correspond with the public on various subjects affecting convention fares, various excursion fares, to appear before committees of this kind, before the Interstate Commerce Commission, the State commissions, etc.

Mr. JOHNSON. In promulgating your tariffs, are they based upon information gathered by you from subordinates?

Mr. BEVINGTON. They are based upon information that is given by the individual railroads themselves.

Mr. JOHNSON. Then you take that information and from that information you promulgate a tariff for that particular road?

Mr. BEVINGTON. Yes, sir.

Mr. JOHNSON. In addition to promulgating tariffs for the railroad companies, your duties are to appear before legislative committees, the Interstate Commerce Commission, and what else?

Mr. BEVINGTON. State commissions. I preside at our meetings when held and talk, discuss, and correspond about matters of common interest.

Mr. JOHNSON. Are you a lawyer?

Mr. BEVINGTON. No; I am sorry to say I am not.

Mr. JOHNSON. How long have you been working for the railroad companies?

Mr. BEVINGTON. About 35 years.

Mr. JOHNSON. May I ask you what salary the railroads pay you?

Mr. BEVINGTON. Yes, sir. After 35 years of service in the railroad business, I now receive the beneficent salary of \$9,000 per annum.

There is a considerable mileage in the United States having a base passenger fare in excess of the 3.6 cents per mile, ranging from approximately 4 to 8 cents per mile or more. An interchangeable mileage ticket sold, for example, at a universal rate of 2½ cents per mile would result in reducing the rate on a very substantial volume of the passenger business of roads carrying such higher fares. It is obvious that if interchangeable mileage tickets are sold at 2½ cents per mile that will defeat local and interline fares between all the principal commercial centers of the country, and can even be used to effect losses to the carriers as against summer, winter, and all-year excursion fares authorized by the carriers from time to time.

It must be patent to all that no one will buy a local ticket from Chicago to New York at the published one-way fare of \$32.70 when by buying another form of ticket he can obtain a rate of \$22.70 and save \$10. When the public is informed that mileage tickets are on sale it will buy them extensively, and the loss to the carriers of the country will range from \$50,000,000 to \$150,000,000 per annum.

Mr. GRAHAM. Mr. Bevington, right in that connection I want to ask you a question. In the years before the war, we will say 1913 and 1914, was there mileage sold on a trip from Chicago to New York, we will say?

Mr. BEVINGTON. No, sir.

Mr. GRAHAM. How far back has there been a period when we did have such mileage books sold?

Mr. BEVINGTON. That is divided into two territorial associations, the trip between Chicago and New York.

Mr. GRAHAM. Well, let us take two cities of prominence where there was mileage sold; for instance, New York and Boston; was there mileage sold there?

Mr. BEVINGTON. Yes; there was such a ticket.

Mr. GRAHAM. Well, let us take that as an illustration. How did your earnings in those days, when you sold mileage on that trip from Boston to New York, which naturally includes considerable local traffic along that line, compare with last year, we will say, on that particular branch?

The CHAIRMAN. Do you mean earnings or receipts?

Mr. GRAHAM. The receipts.

Mr. BEVINGTON. I am not familiar with the traffic between New York and Boston.

Mr. GRAHAM. Well, can you give me two cities in the southeastern territory, from Washington to some other city, where there was mileage sold, so that we can compare the period before the war with last year? I am trying to find out, now, if I can, whether the high rates and no interchangeable mileage has had the effect of discouraging travel.

Mr. BEVINGTON. That would be very difficult, covering a 10-year period like that, because the natural increase due to the growth of the country is a factor.

Mr. GRAHAM. I know it is.

Mr. BEVINGTON. And it is an uncertain factor. You can not tell what it amounts to.

Mr. GRAHAM. A good many of us are concerned about this proposition: Of course, you scale down your receipts by just the reduction that would be occasioned by the sale of mileage but here is an instance which occurs to my mind. For instance, when we raised the first-class postage to 3 cents, there was an immediate dropping off of revenues, as I am informed, and when it was put back to 2 cents, there was an increase of revenues. I have been told and I known in my own experience of some street-car companies where the fares were raised above 5 cents during the war and their earnings fell off from what they had been under the 5-cent rate.

The CHAIRMAN. The receipts, you mean?

Mr. GRAHAM. Yes.

The CHAIRMAN. The receipts and not the net earnings.

Mr. GRAHAM. Now, I would like to know whether there is not some comparison we can make of some period previous to the war; that is, a comparison of some period and some rate somewhere so that we can find out whether there has been a falling off of receipts occasioned by the fact that there is no mileage sold and by having these higher rates?

Mr. BEVINGTON. That comparison could only be made, as I see it, by using the passengers carried one mile. That would tell the story better than any other factor that I know of, but entering into that, always, is this uncertain, economic condition of the country, of the Territory or of the State, and the natural growth and increase in population. We can not ourselves sometimes tell the effect outright. All we know is that if we reduce a rate it produces this much or that much travel and such and such increase or it may not produce anything. We can not always take the causes for the increase apart and tell exactly how to assign them. We have the figures, though, and we know what it does as a general result, but it is a very difficult matter to segregate these different items I speak of and allocate each one so that we can tell what is due to natural growth and what is due to the economic conditions and certain other conditions that enter into it.

Mr. GRAHAM. As a practical proposition, what is the better plan for the railroad, to haul a lot of people at a small profit or a few people at a large profit?

Mr. BEVINGTON. It is altogether according to what your operating expenses are. It is according to what your net is. If the operating expenses were proportionately less for the greater volume of travel, probably they could afford to take a lower unit of profit. In a great volume of business, as in the Ford industry, sometimes there is a greater profit in taking a lower price for a large output, but in our case we do not control all of these factors. We are controlled by the Labor Board and by the Interstate Commerce Commission.

Mr. GRAHAM. I appreciate some of the hardships you are traveling under that I would fix if I knew how to fix them or if somebody would tell the people of the country how to fix them. I think they would be fixed. But perhaps I am getting you off your line of argument. However, I know of a lot of people who live out in my country who do not travel on the trains like they used to, and if you were to ask them the reason they would tell you it is too expensive and, rather than go on the trains, they will go in an automobile or probably will not go at all. I am talking now about local travel. I am thoroughly convinced in my own mind that a lot of those people would ride, maybe unnecessarily and

make on pleasure trips, if they could get a rate that they thought they could afford to pay.

MR. BEVINGTON. Yes.

MR. GRAHAM. And will not that same thing happen with a reduced rate, whether it be mileage or what it be? Now, what do you business men think about that?

MR. BEVINGTON. I think that the railway cost is only one element of travel.

MR. GRAHAM. Of, yes.

MR. BEVINGTON. The local lines keep plenty of travelers at home.

MR. GRAHAM. I am trying to get the fundamentals about this thing, so whether the railroads travel or not, so that you will make more or take less responsibility of your actions and your computations which are based upon a practical basis in your proposition, what do you actually think about all this?

MR. BEVINGTON. If you will permit me these figures I am sending, I am sure you will find them interesting.

MR. GRAHAM. Yes; they are based on actual experience by cutting down by a third the net receipts first by the amount they would be cut down by the reduced receipts from the local lines.

MR. BEVINGTON. I would like to try to answer that question by asking over here, in the railroads reduce the rates when their operating expenses are not reduced?

MR. GRAHAM. Well, I will tell you what you can do. If you can get more business and more receipts, you can afford to reduce them, can you not? If you do not have them, you would get more into your treasury, you could afford to do it, could you not?

MR. BEVINGTON. The gross revenue does not mean anything.

MR. GRAHAM. No; I know that, but let us have an answer to that question. If the companies by reducing their fares or freight rates or whatever it may be can get more business and more receipts, will it not help to do that?

MR. BEVINGTON. If they could get more business and more receipts and have more net revenue or as much net revenue, the reduction might then be made, but if you are at a diminishing point as between your cost of operation and your revenue, then you can not reduce your revenue without reducing the cost of operation.

MR. GRAHAM. How can this committee, which is not only involved in this mileage question, but a lot of other railroad questions, tell where that line of demarcation is between fares and rates that prohibit business or lessen business and where the business will stand the rate or fare? How can we get any intelligent idea of that proposition?

MR. BEVINGTON. I do not know, unless it be done by making a practical test; but then a general, uniform, universal rate would not be the solution, because in the eastern country certain traffic conditions exist, in the southern country they are entirely different, and in the West they differ from those in the East and South.

MR. GRAHAM. That is just why I asked you the practical question in the beginning of these questions I have been asking you.

THE CHAIRMAN. Mr. Graham, would you permit me to ask a question on that line?

MR. GRAHAM. Yes.

THE CHAIRMAN. Would you be better or worse off if you reduced your fares one-half and carried double the number of people?

MR. BEVINGTON. It would all depend upon how much it cost us to carry double the number of people.

THE CHAIRMAN. It is going to cost you just as much as it did before.

MR. BEVINGTON. It is going to cost more.

THE CHAIRMAN. It will cost you just as much, because you will not get any more receipts and you will be out just what it cost you extra to carry twice the number of people if you reduced the fares 50 per cent?

MR. BEVINGTON. Yes.

MR. COOPER. Mr. Bevington, is it not a fact—

THE CHAIRMAN (interposing). Mr. Graham still has the floor.

MR. GRAHAM. I think I have asked, however, practically all I wanted to ask. You say, and you say correctly, that the only way you can find out where that line of demarcation is would be by a practical test in some way. You do not know. You have had years of experience, and, of course, you are much more qualified than I am to judge about what would happen, but you do not know

and nobody knows to-day just what would happen if the railroad fares and freight rates of the country were put down. There is a very large number of people who think it would increase the receipts of the companies and be better for them, while others think the contrary, and I was wondering if we could not get a practical proposition in some way, based on our experience before the war and contrasted with our experience now, which would give us some lead that we could follow, so that we could get something intelligible about that. That is why I asked you the question, and I am wondering if some of you gentlemen can find out something of that kind that you can give to us that will be of help.

Mr. BEVINGTON. Based upon our experience, we think any reduction in an interchangeable mileage ticket would militate against the interests of the railroads and reduce their revenues and take away from their revenue that could not be made up by increased travel, and that is based upon experience and citations which I will give you a little later in this statement.

Mr. SWEET. Mr. Bevington, you are very familiar with conditions in the Mississippi Valley for the last 35 years as to the railroad problems?

Mr. BEVINGTON. Yes.

Mr. SWEET. Now, suppose there was no Labor Board and there was no Interstate Commerce Commission and the conditions that have existed since the war came on, do you believe that the railroads, simply as business concerns, would have been able to have met the situation if they were unhampered?

Mr. BEVINGTON. That is a rather large question for me to answer.

Mr. SWEET. I realize that it is; but your statements here are all to the effect, of course, that it is impossible to cut down your operating expenses, and your rates are fixed. The Labor Board has to do with labor and the Interstate Commerce Commission with rates. I realize there were unusual conditions after the war. The facts are, I believe, out in the Mississippi Valley—and I think you will agree with me about this—that the rates have been so high and the products of the farm have been so low that it has been impossible to handle them in the ordinary way. Now, if the railroads had been unhampered could they have met that situation? I am trying to get at the difficulties that confront us in meeting the economic conditions.

Mr. BEVINGTON. Well, of course, for many years prior to the formation of any of these bodies they operated and got along and made a profit and were successful. I do not know about to-day. I would not venture to answer that question.

Mr. SWEET. Do you believe things would be in better condition if the railroads could have lessened their wages; that is, the wages of their employees, and lessened their rates, without being hampered by any governmental regulation?

Mr. BEVINGTON. Well, I think it would have been better for the people. I do not know whether it would have been better for the railroads or not to reduce the rates, because it always depends upon the difference between what it costs us and what we get for our commodity.

Mr. SWEET. Well, in all probability, the railroads would have reduced the rates to have met the economic conditions following the war, if they were not hampered, instead of raising them.

Mr. BEVINGTON. The railroad people, like other people, are business men, and I think that they undertake to do the things that will best conduce to their own interest and the interests of the public generally.

Mr. SWEET. And is it your idea that if there was less governmental regulation of the railroads, they would be in better position to handle the situation?

Mr. BEVINGTON. Well, that is too large a question for me to answer. That is really an executive matter that I would rather not comment upon.

Mr. MERRITT. Mr. Bevington, I saw in the Washington Star of last evening a dispatch which I thought was timely and had some bearing on this situation. It was headed "Heavy rains in Southwest big aid to the cattle men." Further along the dispatch goes on as follows:

"Retail furniture dealers report a heavy increase in sales throughout the Southwest. This is attributed to the large number of new homes being built. Union plumbers have voluntarily reduced their wage scale from \$10 to \$9 a day. The open-shop movement is well under way in four big Texas cities, San Antonio, Dallas, Houston, and Fort Worth. Iron and steel salesmen report inquiries increasing and a gain in the amount of tonnage being shipped to southwestern points. Jobbers who cover this territory now have 100 per cent of their salesmen on the road for the first time in two years."

The fares are no lower now than they were two years ago?

Mr. BEVINGTON. They are higher than they were two years ago.

Mr. MERRITT. So that in this particular case it would seem to be the amount of business that was to be obtained rather than the fare that was the cause of putting out salesmen?

Mr. BEVINGTON. I think that is true. If there is business to be had, and if the economic conditions of the country are right, I do not think any industry would keep its men off the road for the small difference, which I shall refer to later in this statement, which only amounts to about \$10 a month.

Mr. MERRITT. About \$100 a year, I figure.

Mr. BEVINGTON. Yes.

Mr. COOPER. Mr. Bevington, the operating cost of running a passenger train over any great trunk line is very great, is it not?

Mr. BEVINGTON. Yes; it is.

Mr. COOPER. Most of the trunk lines, say, between New York and Chicago are operating almost to their full capacity right now, so far as passenger trains are concerned, are they not?

Mr. BEVINGTON. Well, on some trains.

Mr. COOPER. That is what I mean. It would be pretty hard for them to put on more passenger trains and at the same time permit the movement of freight, which, of course, is very essential. You have a great many trains on the B. & O. and the New York Central and the Pennsylvania running now between New York and Chicago, and if you were to double the number of passengers by reason of a reduced rate, certainly you would have to put on more passenger trains, would you not?

Mr. BEVINGTON. Yes.

Mr. COOPER. That is, you could not carry an increased number of passengers on the same equipment you are running to-day to any great extent?

Mr. BEVINGTON. We could not carry double the number; no.

Mr. COOPER. In other words, your operating expenses would materially increase with that extra amount of traffic, which you would have to bear by the increased number of passengers?

Mr. BEVINGTON. Yes.

Mr. COOPER. So that after all, just as you say, the question of operating expenses enters very materially into the revenue you would receive by reason of these passenger fares?

Mr. BEVINGTON. Yes, sir; always.

Mr. HOCH. I would like to ask practically the same question that Mr. Graham asked, except in a little different way. The average basic rate of the country is now 3.6 cents per mile. Is it the judgment of your association that considering the varying volumes of business that might be carried under different rates, the varying costs of carrying that business, the general economic conditions of the country, and all the other factors that should be taken into consideration, is it the judgment of your association that the present rate is at a point to produce the greatest net return to the carriers?

Mr. BEVINGTON. That I can best answer by saying it all depends upon the economic conditions of the country.

Mr. HOCH. Well, I say, taking that into consideration, the present economic conditions of the country, and taking everything into consideration that should be taken into consideration, is it the judgment of your association that the rate has reached the level under these economic conditions that would produce the greatest net return to the carriers?

Mr. BEVINGTON. Of course, the present rate was fixed by the Interstate Commerce Commission and promulgated and authorized by them.

Mr. HOCH. But I am asking for your judgment.

Mr. BEVINGTON. Yes; I am going to get to your point. Under present conditions and judging by the fact that industry is not yet revived, I should say that if we should reduce the rate to 3 cents a mile it would not stimulate travel sufficiently to give us the present revenue.

Mr. HOCH. You still do not answer my question. Have you any judgment as to whether you have reached the proper level upon which you can get the greatest net return to the carriers under present conditions? Have you any judgment about that?

Mr. BEVINGTON. Under present conditions probably that is true.

Mr. HOCH. You think, then, that if you increased the rate above 3.6 cents the net revenue to the carriers would be reduced?

Mr. BEVINGTON. Well, I would not increase the present rate; no.

Mr. HOCH. That is my question. There is some point, I take it, from your testimony and from the general consensus of opinion, which will yield the greatest net return. You can not go too high and you can not go too low, but theoretically, we will say, there is a certain rate which under certain conditions will yield the largest net return. That would be true, would it not, as an academic proposition? There must be some point or some rate that would produce the greatest return.

Mr. BEVINGTON. Yes.

Mr. HOCH. Now, have you any judgment as to whether that point has exactly been fixed at the place where it will yield the greatest net return to the carriers?

Mr. BEVINGTON. That would depend upon the geography of the country. You can not fix a universal rate that will produce the best results in all the various sections of this country.

Mr. HOCH. Let me ask you the question in this way: If you had the power to-day, without any restraint, simply as a cold-blooded proposition, from the standpoint of the carriers alone, to fix a passenger rate which would get for the carriers under present conditions, with the present geography of the country and everything taken into consideration, the largest net return, have you any judgment now as to what rate per mile you would fix on the average for the country?

Mr. BEVINGTON. Under present conditions I would continue the present rate per mile.

Mr. HOCH. Then it would be your judgment that if you would increase the rate you would decrease the net return to the carriers?

Mr. BEVINGTON. No; I beg your pardon; I did not say that.

Mr. HOCH. Then why would you not fix it at a point to produce the greatest net return? As a business proposition that would be the thing to do, would it not?

Mr. BEVINGTON. So far as I know, the present rate is the best rate under present conditions.

Mr. HOCH. Then you would not increase it, would you? There is no puzzle about this, I am simply trying to get your judgment about it.

Mr. BEVINGTON. No; I would not increase it and I would not decrease it.

Mr. HOCH. Then your judgment is that 3.6 cents per mile is the rate for yielding the largest net return to the carriers?

Mr. BEVINGTON. Under present conditions.

Mr. HAWES. Mr. Bevington, when we reviewed the thought back of this bill we found it was intended to reduce rates, and later the proponents of the bill discovered that they could not do this by act of Congress, but there was another thought back of this, emphasized by a great many letters that I receive from prominent business men in my community, and that is the convenience of the interchangeable mileage ticket, the convenience for the traveler and the convenience for the firm. Now, prior to the war and the regulation of rates by the Interstate Commerce Commission the railroads did issue interchangeable mileage tickets. I am under the impression that part of the thought back of this agitation was for a return to a custom that was inaugurated by the railroads themselves prior to any interference on the part of the Government. Now, leaving aside for the moment the question of the reduction in the passenger rates, and confining the question exclusively to the convenience which the traveling public secures from an interchangeable mileage ticket, which you have variously estimated would run from 20 per cent, I believe, to 60 per cent, why can not the railroads return to the interchangeable mileage ticket used prior to the war?

Mr. BEVINGTON. Because for many years prior to the war the railroads had made every effort they could to withdraw the mileage tickets, because of the abuse of them and because of the effect upon their local revenue. While they were sold restricted to the use of a certain person in consideration of the using of the 1,000 miles, the person himself would take that ticket and transfer it to somebody else for a local trip. Scalpers used them. There is not any possible way of policing the use of these tickets, because there would be so many tens of thousands of conductors working on the big trains, ticket agents engaged in selling the tickets, with a line of people waiting, they have not the time to require a man to identify himself and to show that he is the original purchaser of the ticket, so that through misuse generally this ticket, this universal ticket, any ticket, will be transferable and if you undertake to make it nontransferable it would be nontransferable in name only, because it would result in the scalpers

using them. Even our commutation tickets to-day, although nontransferable, are farmed out by various merchants and druggists and even by bootblacks in suburban towns to other than the original purchasers, and in that way we are beaten out of our local revenues by people who are not entitled to a reduction, because they have not entered into this contract to use this transportation and to pay for it in advance and buy it in the way it is sold and under the conditions under which it is sold. It results in reducing our revenue not only on mileage tickets for the transportation sold to those original buyers or purchasers, but to tens of thousands of other people who never bought a mileage ticket in their lives and never intend to.

Mr. HAWES. That is an abuse of the mileage ticket that I can understand. I remember the old fights of the railroads against the ticket scalpers, but the other side of the question, of the busy man who wants to buy his transportation by wholesale so he will not lose from 20 to 30 minutes in a day standing in line at the ticket window, a traveling man especially, who goes from town to town, where he loses in the course of a week perhaps half a day at the ticket window. I am impressed with the idea, Mr. Bevington, that aside from the question of rates entirely, that class having had this privilege, the traveling public wants it returned as a matter of convenience. I have been a traveler myself and I have found it convenient in interstate travel. The commuter who buys his single passage ticket in a hurry in the morning and in a hurry in the evening, it is hard on his patience and the loss of his time. Do you not think it is possible that the commission would advocate the issuance of a mileage ticket, protecting it by a photograph and accompanied by restrictions and penalties which could restore to the public this convenience which they formerly had and limiting to an extent the illegal use of the mileage ticket?

Mr. BEVINGTON. We have already met that situation by providing an interchangeable mileage scrip book which is honored on the trains. They are provided with every facility under that, more than they received under the old mileage ticket, because under the old mileage ticket prior to the war they had to confine their movements to a certain territory. For instance, the Central Traffic Association ticket was honored only within Central Traffic Association territory—east of Chicago and St. Louis and west of Buffalo and Pittsburgh. The southeastern mileage ticket was only honored in that territory and the New England mileage ticket in that territory. The interchangeable mileage ticket serves every purpose which you have indicated.

Mr. HAWES. Is that on one system of roads or is it on all the roads?

Mr. BEVINGTON. It is honored by practically every railroad in the United States.

Mr. HAWES. Am I to understand that to-day there is a mileage ticket that can be secured by the traveling public?

Mr. BEVINGTON. Yes, sir.

The CHAIRMAN. A scrip ticket.

Mr. BEVINGTON. Not a mileage ticket, but a scrip ticket. We sell them, to meet the convenience of the public, as small as \$15. They are a great advantage to the public, more than the old mileage ticket, because in some cases in the old days they did not equalize the mileage. This being a money proposition, we equalize the rate, and it is a greater benefit to the public than the old mileage ticket was.

Mr. NEWTON. With reference to that particular proposition, then, where travelers are going to a competitive point, where it is 250 miles one way and 210 miles another way, under the scrip book they would only take off 210 miles?

Mr. BEVINGTON. Take off the rate for 210 miles.

Mr. NEWTON. Whereas under the old mileage-book system they would pull the number of miles?

Mr. BEVINGTON. In some cases the mileage is equalized. In the old days that was practically impossible; and a mileage ticket would be impracticable to-day, because we have over 14,000 routes between New York City and San Francisco, and if a man were going by a certain route we would have to tell every ticket agent and every conductor along the 14,000 routes and how to equalize the mileages of all routes. It would be impracticable.

The CHAIRMAN. Do you want to take up a new subject? We have about four or five minutes left.

Mr. NEWTON. Before the committee adjourns there is a matter which I want to bring to its attention.

The CHAIRMAN. Please hold that for a moment.

Mr. Bevington, would you rather start on the new subject now or wait until to-morrow morning?

Mr. BEVINGTON. Whatever may be the pleasure and convenience of the committee.

The CHAIRMAN. You are going to take up a new subject?

Mr. BEVINGTON. Yes, sir; I am going to take up a new subject.

The CHAIRMAN. Then I would suggest that you wait until 10 o'clock to-morrow morning.

Mr. BEVINGTON. Very well, Mr. Chairman.

The CHAIRMAN. Mr. Thom, did you wish to say a word?

Mr. THOM. Mr. Chairman, a number of members of the committee have come into the room since I made my statement. I do not want to reiterate it in full but merely to call attention to the nature of it for the information of those who were not present.

The statement I made was that while the uniform judgment of the railroads was against this legislation in principle, we did not propose to be contentious about it, and that we proposed to put on a single witness who would give the result of the study of the expert passenger men on this subject and then leave it to the committee. Since making that statement I have received this telegram, which I think I ought to read to the committee. It is from Mr. N. W. Hawkes, chairman of the New England Passenger Association, addressed to me in this room:

"In connection with hearing on mileage book, Senate bill 848, President Hustis, Boston & Maine Railroad, states in his opinion situation as affecting Boston & Maine very serious and feels same should be especially called attention House committee. Otherwise procedure before committee is left in your hands."

I merely read it for the purpose of saying what I said this morning—that there would be a single witness. In view of the position of the president of the Boston & Maine Railroad, I shall ask the committee to hear, at its convenience, Mr. Pratt, who has the figures as to the Boston & Maine.

The CHAIRMAN. Very well.

That will terminate the hearing for to-day on this bill.

(Thereupon the committee adjourned to meet to-morrow, Wednesday, March 29, 1922, at 10 o'clock a. m.)

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
*Wednesday, March 29, 1922.***

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. We will proceed with the hearing on Senate Bill 848. Mr. Bevington, if it is your pleasure to go ahead with your statement.

STATEMENT OF MR. E. L. BEVINGTON, CHAIRMAN TRANSCONTINENTAL PASSENGER ASSOCIATION, CHICAGO, ILL.—Resumed.

Mr. BEVINGTON. A good deal has been said on the subject of the stimulation of traffic in the event an interchangeable mileage ticket at a reduced fare is placed on sale.

On that we desire to say experience has demonstrated that the sale of reduced rate mileage tickets will not increase the revenues of the carriers.

In 1907 the legislatures of a number of Western States passed what are commonly known as "2-cent fare acts," reducing passenger fares from 3 cents to 2 cents per mile.

In the case of one large western railroad (which was the common experience of other roads) passenger fares were reduced in 1907 from 3 cents to 2 cents per mile on 75.79 per cent of its total mileage. Notwithstanding the reduced fare, the total number of passengers carried during the fiscal year ended June 30, 1908, increased only 2.16 per cent over the number carried in the preceding fiscal year, when the basic passenger fare was 3 cents per mile.

In April, 1914, the passenger fares on the same line in South Dakota were reduced from 3 cents per mile to 2½ cents per mile, a reduction of 16.66 per cent. Notwithstanding that substantial reduction the number of passengers

carried 1 mile intrastate in South Dakota for the three months immediately following the reduction decreased 3.42 per cent, as compared with the corresponding months in the previous year, in which rate of 3 cents per mile was in effect.

Commercial travelers represent less than 5 per cent of the total. The volume of that travel is always measured by business conditions and by the seasons. It is more or less seasonal traffic. It is not continuous nor uniformly well sustained. When business conditions are good it moves; when business depression comes it does not move in such volume.

In this connection I invite attention to a circular issued by the commercial travelers, in which the following appears:

"A conservative estimate places the accruing revenues to the carriers of the United States from commercial travelers' patronage alone at \$484,000,000 annually"—

The CHAIRMAN (interposing). Can you insert that circular in the record?

Mr. BEVINGTON. Yes; I have it right here.

(The circular referred to follows:)

[The Commercial Travelers' Mutual Accident Association of America, Utica, N. Y. Russell H. Wicks, president; H. E. Trevyett, secretary and treasurer; Theo. M. Glatt, Everett F. Crumb, George A. Tyler, John R. Lewis, Jesse E. Jones, Robert E. King, directors.]

AN APPEAL FOR JUSTICE, COMMERCIAL EXPANSION, AND NOT SPECIAL PRIVILEGES.

This is the demand of the International Federation of Commercial Travelers Organizations, with an affiliated membership of over 650,000, thoroughly organized with the unqualified support and cooperation of their employers, and now engaged in a determined effort to have our transportation lines return to a reasonable pre-war basis both in passenger and freight traffic.

The first important step in the direction of normalcy affecting the commercial traveler and employer is the immediate resumption of scrip interchangeable mileage books of 3,000 or 5,000 miles denominations and sold at a flat rate of 25 per cent under prevailing passenger tariffs, believing in the wholesale principle being applied to passenger transportation the same as applied to freight or mercantile commodities. The wholesale principle being recognized and practiced throughout the civilized world and believed justifiable.

A reduction of 25 per cent, considering the denomination of mileage books suggested, seems conservative, reasonable, and just, and would have the effect of reemploying the thousands of commercial travelers now idle, an impetus and stimulant to present business depression and an undoubted source of increased revenue to the carriers. These mileage books being open to the general public avoids discrimination, and in urging the issuance of interchangeable mileage we are introducing nothing new or experimental in railroad passenger traffic, and the issuance of such mileage being suspended only as a war measure. Now, if the radical advance in rail rates was for the purpose of discouraging railroad traffic to facilitate the movement of troops during the war, is it not time to remove this discouragement by reducing rates to a point where they will cease to be prohibitive?

The commercial traveler is a fixed, essential, and indispensable factor in our commercial activities, and the federation, with its numerical strength and influence, occupies a prominent position in the country's development and progress, and carriers should grant them every reasonable concession commensurate with their enormous patronage as revenue producers, both passenger and freight.

Canadian railroads grant liberal concessions to the commercial travelers, appreciating evidently their constant and increasing revenue-producing activities. A conservative estimate places the accruing revenues to the carriers of the United States from commercial travelers' patronage alone at \$484,000,000 annually, to say nothing of their stimulating influence upon freight traffic.

Having appealed to railroad management without success and the Interstate Commerce Commission seemingly unconscious to the necessity for action, we naturally appeal to the Congress of the United States, possessing the power and authority to enact into law the essential elements for the granting of relief prayed for. Encouraged by the action of the Senate, our efforts at this time must be concentrated upon the House of Representatives in Congress, and to that end urgently request every commercial traveler and employer to write

their respective Representative in Congress urging support of H. R. 2894, amended, as set forth herein.

D. K. CLINK,

I. F. of C. T. O., Chairman, Chicago, Ill.,

R. M. SWEITZER,

I. C. M. A., Chicago,

W. D. MURPHY,

U. C. T. of A., Columbus, Ohio,

T. S. LOGAN,

T. P. A., St. Louis, Mo.,

H. E. TREVETT,

C. T. M. A. A., Utica, N. Y.,

Railroad Committee.

Mr. SANDERS. Do you think that is an accurate statement?

Mr. BEVINGTON. I am going to comment on it.

Mr. SANDERS. It just struck me as a pretty large percentage of the passenger revenue.

Mr. BEVINGTON. Yes; it is exceedingly large.

They state that "a conservative estimate places the accruing revenues to the carriers of the United States from commercial travelers' patronage alone at \$484,000,000 annually, to say nothing of their stimulating influence upon freight traffic." It is obvious that this must be an error. The total passenger earnings in 1921 were \$1,153,752,002, and \$484,000,000 is approximately 42 per cent of that amount. The traveling men claim a total membership of 650,000. They, therefore, argue that that number, or less than 1 per cent of the total population, contributes 42 per cent of the earnings of the carriers.

Mr. THOM. Passenger earnings?

Mr. BEVINGTON. Yes; passenger earning of the carriers. The fallacy of such a claim is apparent on its face. If, however, the representations of the commercial travelers were accepted as facts, they alone would enjoy a reduction of \$145,000,000 annually if a rate of 2½ cents per mile were established.

Merely for the purpose of illustration, let us assume that one-quarter of the total passenger traffic, exclusive of commutation, etc., valued at \$250,000,000, would move on interchangeable mileage tickets on a basis of 2½ cents per mile. This would reduce the passenger revenue of the carriers 30.5 per cent or \$76,250,000. An increase of over 43 per cent in revenue on this volume of traffic would be necessary before the carriers would receive the same revenue as prior to the reduction. Even should this happen it is obvious that this large additional volume of traffic could not be carried without additional cost. This would mean that the revenue from the sale of mileage tickets must increase to an unknown percentage in excess of 43 per cent before the carriers would break even, to say nothing of making a profit on traffic handled on mileage tickets at 2½ cents per mile.

On the subject of the cost of service we submit that—based upon expense figures secured from the I. C. C. monthly reports of Class I roads in the United States for the 11 months ended November 30, 1921—the cost of moving a passenger car, of any type, 1 mile is 40.02 cents. This includes nothing for fixed charges or return on investment. Reports from the commission disclose that the average number of revenue passengers per car in the United States is 16.54; average rate per mile 3.08 cents. If a part of the travel moves at 2½ cents per mile it would contribute an average earning of but 41.3 cents per car per mile, leaving only 1.33 cents per mile for fixed charges and return on investment, and 9.58 cents less than the average rate per car-mile.

During the years that mileage tickets were on sale at varying rates below the basic rates per mile, there was no evidence that such tickets were a strong factor in stimulating traffic. It can not be gainsaid that they did increase the passenger miles to some extent but never to any great degree. No advantage inures to the carriers through an increase in the passenger miles unless the revenue increases proportionately. It is obvious that if the passenger miles increase disproportionately to the revenue, meaning that the operating expenses increase at a greater ratio than the income, the point is soon reached where the operating cost exceeds the income.

If this concession were granted to commercial travelers it will not only lose to the carriers practically the total amount of the reduction in dollars and cents, which the commercial travelers would gain, but it would also lose to the carriers a great deal more than this, because a large percentage of the

general traffic would avail itself of any reduction made for the benefit of the traveling men's organizations.

We do not believe that a reduced mileage ticket will permanently and substantially stimulate commercial travel, nor that a reduction of 1.1 cents per mile will inspire those already on the road to extend their trips, or others not on the road to begin long pilgrimages to a degree which will offset the losses sustained by the carriers, by virtue of the reduction to all comers.

Mr. HUDDLESTON. May I ask you a question at this juncture? I happen to know that many retailers away from the jobbing centers order their goods from him when traveling salesmen come to them. When salesmen carrying such lines of goods as they want do not come, these retailers go to the jobbing centers and make their purchases direct from the wholesalers. I am wondering whether you have considered whether any possible increase in the use of transportation by traveling salesmen might not be offset or more than offset by the loss occasioned by the failure of these retailers to go to the jobbing centers?

Mr. BEVINGTON. I think I have already referred to that, Mr. Huddleston.

Mr. HUDDLESTON. I did not recall that.

Mr. BEVINGTON. And suggested that you consider it from the angle that if one traveling man did not go out and sell 100 merchants, that a reasonable percentage at least of the 100 merchants would travel to the wholesale and jobbing centers to buy their goods.

Mr. HUDDLESTON. I did not know you had covered that point.

Mr. BEVINGTON. And not only that, but if these merchants were to go to the wholesale and jobbing centers, it is probable that in view of the larger exhibits and the greater variety of goods on view which could be examined, they would buy more goods and a greater variety of goods than they could buy from the small exhibits shown by the salesmen.

I was referring to the fact, as our experience demonstrates, that men already on the road would not extend their trips, nor those not on the road begin long trips even at a reduced rate for these reasons:

First. The movements of a traveling salesman are controlled by his own interests, the interests of his firm, and by general business conditions.

Second. Transportation is but one item in the cost of travel. Hotel rates and transfer charges are also important items.

On the subject of scalping, even if a nontransferable mileage ticket, limited to the use of the original purchaser, were put on sale, it is bound to be manipulated by scalpers and others. It is impossible, under present conditions, to police the situation and prevent the transfer and misuse of nontransferable tickets.

The estimates given herein do not take into consideration the enormous additional losses in revenue to the carriers which would result from a revival of the scalping industry.

It might be added that where nontransferable signature forms of tickets are transferred and used by other than the original purchasers, it requires the transferees to travel under assumed names and to commit forgery in signing the names in an effort to identify themselves as the original purchasers.

Abuse in the checking of baggage: Any form of interchangeable mileage ticket honored on trains would lend itself to serious abuses in the checking of baggage, thus involving the carriers in further important losses of revenue. These may be enumerated, as follows:

1. Baggage will be checked between points between which passengers do not travel. This will encourage the shipment of freight by baggage service, the carriers not being in position to police the contents of baggage shipments. For example, a New York commercial house can ship its samples to its salesmen, or even goods for sale, as between New York and Chicago, or New York and Denver, while the tickets will be used by salesmen of the house in the vicinity of New York, or elsewhere, who carry their samples in hand baggage.

2. Baggage will be checked by railroad while the passenger uses other means of transportation—interurban lines, automobiles, etc.—between the same or different points.

3. Baggage will be checked via one railroad, while the passenger uses another railroad.

Transportation of baggage is incidental to the transportation of the passenger, and the irregularities mentioned involve the individual carriers in direct loss of revenue.

The idea is that we do not accept baggage as such in any case; unless it is accompanied by its owner it becomes freight or express and should be shipped

by freight or express. Our baggage facilities are limited, and we must adopt reasonable rules and regulations to keep baggage shipments within bounds, so that we may be in position to carry the immense amount of general baggage upon the same train with the passenger.

Mr. COOPER. I wish you would explain to the committee how that can take place. Do I understand that a man can go with a mileage book to the baggage clerk and check a trunk on through from New York to Chicago, and at the same time it would not be necessary for him to be a passenger on that train to Chicago?

Mr. BEVINGTON. Exactly.

Mr. COOPER. They could do that?

Mr. BEVINGTON. Under this proposed system. Under an interchangeable mileage ticket he could check baggage anywhere, and he need not move between the same points himself.

Mr. SANDERS. He would have to exhaust his supply of tickets to do that.

Mr. BEVINGTON. He would exhaust the baggage privilege.

Mr. SANDERS. Yes; he would have to exhaust the baggage privilege on the ticket in order to do that.

Mr. BEVINGTON. Yes.

Mr. SANDERS. But your idea is that he would go the full maximum every time whether he traveled or not?

Mr. BEVINGTON. Just as previously explained, a commercial house employing a large number of travelers would use these interchangeable mileage tickets that are issued to men who carry their samples in hand baggage, who travel in and about New York and in that vicinity, in checking baggage to San Francisco or Denver or Chicago or any other place. In other words, they would consume all the baggage privileges in connection with all tickets that they owned.

Mr. LEA. Would it not be reasonable to suppose that the commission, under the authority given in section 2, would make reasonable regulations to protect the railroad companies against such abuses as you have mentioned?

Mr. BEVINGTON. I do not see how that would be possible, unless they required every holder of an interchangeable mileage ticket having baggage to check to exchange that ticket for a local ticket upon which would be punched the baggage checked. Otherwise it would be impossible to protect them.

Mr. LEA. But that would seem to be a just thing to do in order to afford the railroad company that protection, would it not?

Mr. BEVINGTON. Yes, sir; it would be; but your commercial man does not want to be obliged to go to a ticket office and exchange his ticket. He wants a ticket that enables him to go to the station and step right on the train. His point is it will serve as a convenience to enable him to do that, and he does not want to get in line at the ticket office, as he expresses it, and exchange his ticket or buy a ticket. He wants something in his hand, so that he will be ready to step right on the train.

Mr. LEA. He could not justly complain against a practice that was necessary in order to protect the railroad company against an abuse of that kind.

Mr. BEVINGTON. Not justly, but he does it just the same.

Interest on money held by carriers: It is alleged carriers derive great financial advantage from use of money paid on mileage books on which service is not performed for a period after purchase.

Experience has shown that the average lifetime of a 1,000-mile book, sold at a discount of 20 per cent, or \$28.80, would be about two months. As the passenger would be paid back in service one-half of the purchase price in 30 days, the carriers would have an average use of the \$28.80 but one-half of the 60-day average lifetime, or 30 days.

Six per cent on \$28.80 for 30 days is 14.4 cents. The cost of a 1,000-mile book is 15 cents. We credit the passenger with the cost of 20 card tickets, 20 being about the average number of trips taken on a 1,000-mile ticket, the traveling men themselves having before the Senate committee, and I think before this committee, stated that their average trip is 50 miles. So we therefore credit the passenger with the cost of 20 card tickets, which is 2 cents. The net cost to the railroads for merely furnishing the mileage book, after crediting the cost of card tickets, is 13 cents. The estimated interest return at 6 per cent being 14.4 cents, leaves a theoretical value to the railroads for mileage books for the use of the money of 1.4 cents.

As this computation does not include the additional expense of accounting inseparable from interchangeable mileage, it is obvious that the revenue benefits to the carriers from this source would be negligible.

Any character of nation-wide interchangeable mileage will require an extensive exchange of voluminous accounting reports between carriers.

The labor and expense entailed in such settlements will be greatly in excess of that required in handling an equal amount of business on tickets of ordinary forms. Based upon experience and the best facts available, it is estimated that the additional sales and accounting cost to the carriers of an interchangeable mileage ticket may readily exceed \$1,000,000 per annum.

The CHAIRMAN. In addition?

Mr. BEVINGTON. Additional; yes, sir.

As to the effect on other travel, if mileage tickets were sold at a reduction to the general public, theatrical companies, circuses, concert companies, bands, and other public entertainments, and other organized traffic would also ask for special consideration covering their transportation.

The mileage rate was one of the chief reasons advanced in the various State legislatures for reducing the basic fare to 2 cents per mile. Wherever a reduced mileage rate prevailed, the traveling public to a considerable extent could not be convinced that the same basis should not prevail for all regular passenger travel.

Whatever the basic rate per mile, the commercial travelers have always represented that they were entitled to a lower basis because of the frequency of their journeys and the wholesale-principle theory. That this thought is still in the minds of representatives of the travelers' organizations is evidenced by the statement of one of their witnesses at the session last Friday that if the present basic fare were reduced commercial travelers and other purchasers of mileage tickets should be entitled to a still lower rate per mile.

For years the sentiment of the carriers throughout the country has been against the sale of mileage tickets at a reduced fare and considerable progress looking to their withdrawal was made prior to Federal control. Withdrawal of these tickets having been directed during Federal control, it is now the sentiment of the carriers that their sale should not be resumed on a reduced-rate basis.

There are now on sale generally throughout the United States three interchangeable money scrip books in denominations of \$15, \$30, and \$90, instituted during Federal control and since continued. These books are sold at face value, and being scrip, the equivalent of money, are honored for local and interline trips between any two points in the United States—except that a very few small lines do not participate—on the basis of tariff fare via route traveled; thus if the holder of a \$30 scrip book travels between two points where the published fare is \$10, detachments are made from the book to the amount of \$10, leaving \$20 remaining in the book for use in connection with future trips. Those scrip tickets serve every convenience that a mileage ticket would serve.

On the subject of discrimination, the Interstate Commerce Commission has said—

Mr. BURROUGHS (interposing). May I ask you just one question there? Do I understand that in the use of these scrip books the holder has to present them at the ticket office and get a ticket for that amount?

Mr. BEVINGTON. Either way. He can present them at the ticket office or he can present them on the train, and they are accepted either way.

Mr. BURROUGHS. It is not obligatory, then, for him to present them at the ticket office?

Mr. BEVINGTON. No, sir.

Mr. JONES. How is the baggage handled on these tickets, if they are exchanged at the ticket office?

Mr. BEVINGTON. The same as on any other form of ticket. The man presents the ticket and says he is going 100 miles distant, and his baggage is checked to his destination just as he indicates.

Mr. JONES. Suppose he does not use the scrip book, would the use be the same as if he had a mileage book?

Mr. BEVINGTON. I do not understand.

Mr. JONES. Suppose he does not use the ticket or the book and does not take that route or use that road?

Mr. BEVINGTON. That is just the abuse I refer to. That is the difficulty.

The CHAIRMAN. Mr. Jones, they cancel out the scrip, so that the privilege to carry baggage thereafter amounts to nothing for the amount of miles covered by the cancellation.

Mr. JONES. That is true of mileage; but the point I am trying to get at is whether with the use of the scrip book you do not have the same abuses you would have with mileage books so far as baggage is concerned?

Mr. BEVINGTON. Yes; if a mileage book is interchangeable the same as this, we would have the same abuse.

Mr. JONES. And you would have that same abuse unless the scrip were exchanged for a ticket and a ticket used for the purpose of checking the baggage?

Mr. BEVINGTON. Yes, sir.

Mr. GRAHAM. Just one or two more questions on that line. It seems to me that the use of this scrip book rather answers some of the points you have been making; for instance, the one just mentioned by Mr. Jones, and then the one with reference to the accounting system between the roads. If one road sells a scrip book, there has to be an accounting system between all the roads to settle for the scrip that is taken up by the various conductors. Is not that true?

Mr. BEVINGTON. Yes.

Mr. GRAHAM. And could not the same machinery be used if it was interchangeable mileage?

Mr. BEVINGTON. The same methods could be used, but we would have to increase our forces twenty or twenty-five fold.

Mr. GRAHAM. You would?

Mr. BEVINGTON. Because the interchangeable scrip book is not used to the extent that an interchangeable scrip or mileage book would be used, sold at a reduced rate.

Mr. GRAHAM. They are not used very much, then?

Mr. BEVINGTON. They are used. I think, for about 2 per cent of the total business. In the trunk-line territory—I will take that back; we discovered the other night it was about 5 per cent in trunk-line territory.

Mr. GRAHAM. And you figure about 25 per cent probably would use mileage?

Mr. BEVINGTON. The gentleman here on my left corrects me and says that the use of it in trunk-line territory is $1\frac{1}{2}$ per cent.

Mr. GRAHAM. And you figure on about 25 per cent if mileage were used, do you?

Mr. BEVINGTON. Yes; that is our lowest estimate. Of course, we have shown here that an interchangeable mileage ticket would be used between certain points up to as high as 95 per cent of the total traffic.

Mr. GRAHAM. How extensive was the sale of mileage tickets in the old days? When we had a system of interchangeable mileage on some roads, what per cent did it average then?

Mr. BEVINGTON. About 20 per cent.

Mr. GRAHAM. What is the cost of printing and preparing one of these scrip books?

Mr. BEVINGTON. About 14 cents, I think I stated.

Mr. GRAHAM. You spoke of the mileage book costing about 15 cents, but does the scrip book cost the same?

Mr. BEVINGTON. The scrip book costs about the same. [Reading:]

"Obviously there would be a discrimination, but whether unreasonable or unjust would depend upon the facts in each case. We have never held that mere discrepancies in the amounts charged constituted unjust discrimination, but have investigated cases involving alleged unjust discrimination to ascertain the circumstances and conditions under which the transportation was performed. If, as has been shown in some cases before us, it should appear that the passenger paying $2\frac{1}{2}$ cents a mile received substantially the same service as the passenger paying 3.6 cents a mile, plus Pullman surcharge, a case of unjust discrimination would be presented in the absence of approval by the Congress.

"Both the initial cost and the distance to be traversed would preclude the use of the 5,000-mile ticket by the ordinary person. Assuming that the transportation service performed is substantially the same as that furnished for the standard passenger fare, it would seem that the only basis for a distinction in price is the quantity of transportation purchased. If sound this would, of course, warrant lower rates for large shippers than for their smaller competitors. The commission has, from the time it was created, opposed any rates based on what may be called the 'wholesale' theory. In re Mileage Books (28 I. C. C. 318, 323) we called attention to the fact that if it were not for the authorization in section 22 of the act, 'it is debatable whether the conces-

sion from the regular fare made to the purchasers of mileage books would be lawful."

Mr. SANDERS. Are you still reading from the opinion of the Interstate Commerce Commission?

Mr. BEVINGTON. Yes, sir. [Reading:]

"It may be appropriate to mention the fact that, while 'mileage excursion or commutation passenger tickets' are grouped together in section 22, excursion and commutation fares are ordinarily used in a service which is distinct in many particulars from the regular passenger service."

That is the end of the quotation.

The sale of 5,000, 3,000, or 1,000 mile tickets at a reduced fare would invite criticism and charges of discrimination, as in the past, by the less well to do, who constitute the bulk of passenger travel, on the ground that they can not afford to advance the amount necessary to purchase mileage transportation, thus depriving them of equal fares with those in position to make such advances.

Mr. JONES. Right there, you have a discrimination now between the people who do not pay the surcharge to ride on the Pullman and those who ride in the day coach, do you not?

Mr. BEVINGTON. No, sir; we do not consider that a discrimination because of the superior accommodations secured by passengers paying the surcharge. They occupy more space. We carry two or three times the dead weight for a passenger paying the surcharge that we carry for a passenger occupying space in a day coach.

Commercial travelers, merchants, and others best able to advance the money would take advantage of a reduced mileage ticket rate, while farmers, small tradesmen, cotton pickers, coal miners, harvest hands, lumbermen, sugar-beet workers, school teachers, students, and others making up the great bulk of the population, would pay the full normal rate while all classes would occupy the same class of accommodation in the same train.

As to the wholesale principle—with respect to this subject attention is invited to comment of the Interstate Commerce Commission, previously quoted; that is, that both the initial cost and the distance to be traversed would preclude, and so forth, just as previously read.

Mr. COOPER. You are familiar with the passenger rates on the suburban lines running into and out of Chicago. They have a reduced rate on commutation tickets on the suburban lines that run out of Chicago?

Mr. BEVINGTON. Yes, sir.

Mr. COOPER. They have?

Mr. BEVINGTON. Yes, sir. Those communities are built up and settled on the basis of the commutation rate which has been generally recognized as desirable and necessary in all large cities.

Mr. COOPER. The reason I asked that question was, I was wondering whether those people might benefit by the mileage book?

Mr. BEVINGTON. No, sir. In making our computation as to the traffic which would be affected we have excluded commutation because it would not be affected.

Reference was made by the advocates of reduced rate mileage to the carload freight rate which is less than the rate per hundred pounds for same total weight. The carload rate is for continuous bulk service as a unit. The 100 pound rate is based on a number of individual transactions involving a greater expense; therefore there properly exists a difference in rate. While full payment would be made for mileage tickets when purchased, the performance of the service would be a succession of retail transactions, averaging (as stated on behalf of the commercial travelers) 50 miles per train. Instead of working out on the wholesale principle the reverse is the case.

The same carload rate is collected from the shipper of 5,000 cars that is collected from the shipper of 1 car.

Commercial travelers in asking for this mileage ticket are asking for a ticket at a reduced fare which is usable for a myriad of short trips at any time within one year from date of purchase; that is to say, it is a combination of many tickets for various trips consolidated into one ticket; they are asking the equivalent of what would happen in the following illustration of a freight shipment:

The carload rate on sugar, say, 50,000 pounds, is less than for an equal weight shipped a few sacks at a time or in less than carload lots. If a shipper of this carload of sugar were permitted to pay the carload freight rate in advance and then ship the sugar in lots of 5 pounds, 10 pounds, 50 pounds,

and 100 pounds throughout a year he would only be getting the same privilege—that the commercial men are asking in laying down the price of a 1,000-mile ticket or a 5,000-mile ticket and then using such ticket for short trips anywhere in the United States or on any railroad at any time within one year.

Mr. GRAHAM. The bill says that this ticket shall be good for interstate travel, I think. Do you construe that to include intrastate trips? That is, if I should get on a train in my State and present my interchangeable book to the conductor to another point within the State, he would have to pull the mileage?

Mr. BEVINGTON. If the law were enacted, we would endeavor to obey the law.

Mr. GRAHAM. That is not what I am asking you about. What is your judgment as to what that means; do you think that means that this interchangeable mileage would be good? The language is this: "good for interstate passenger carriage upon the passenger trains." Is the ticket for interstate passenger carriage? You are arguing this upon the theory that it would be good for any trip anywhere, either inside the State or in interstate travel?

Mr. BEVINGTON. If the law so indicated.

Mr. GRAHAM. But that is what the law says. What do you think it means?

Mr. BEVINGTON. I interpret it to mean that if this bill becomes a law we must put on sale an interchangeable mileage ticket for interstate traffic.

Mr. GRAHAM. I know. Do not let us quibble about that matter. I would be very glad to know whether you think that is good for any trip anywhere in accordance with the language of this bill?

Mr. BEVINGTON. No, sir; I do not think it would be good for intrastate travel when the law specifically confines it to interstate travel.

Mr. GRAHAM. That is what I am trying to get at.

Mr. SANDERS. If we were to amend it so as to apply to intrastate commerce, how many State commissions would object to our robbing them of their jurisdiction? You may not want to express an opinion.

Mr. BEVINGTON. I do not know how many would object. I understand all object to being robbed of their jurisdiction.

Mr. HOCH. If it led to a reduction in rates, you mean, the State commissions would, under the present circumstances, object?

Mr. BEVINGTON. I never met any person who ever objected to a reduced rate.

Mr. RAYBURN. When these interchangeable mileage books were issued in the past by the railroads they were good for intrastate business. I rode on them.

Mr. JONES. They were by reason of contracts between the railroads; that is a different proposition.

Mr. GRAHAM. They were not regulated as these would be. I am speaking of the express language in this bill, which is a Federal act.

Mr. RAYBURN. You have to put those words in there, but I do not think there would be any question.

Mr. BEVINGTON. I did not hear the question, but I realize that in the old days when mileage rates were in effect the tickets were good interstate, but not intrastate, in many cases.

For instance, when the interstate fare was 2.5 cents a mile between two States and the intrastate fare within those States was 2 cents a mile, mileage tickets were not honored intrastate, but were honored interstate, thus giving a reduction of one-half a cent a mile interstate.

Mr. RAYBURN. Whether the mileage in the State was the same?

Mr. BEVINGTON. Yes, sir.

Mr. HOCH. Of course, nobody would present them to be honored intrastate when the interstate rate was 2.5 cents and the intrastate rate 2 cents—of course, nobody would present them?

Mr. BEVINGTON. They might, as a matter of convenience.

Mr. HOCH. There would not be very many cases.

Mr. COOPER. I want to get this clear. Do I understand that under the provisions of this bill, if it became a law, that I could not ride from Philadelphia to Pittsburgh on the Pennsylvania line on this mileage book?

Mr. BEVINGTON. That would be my understanding.

Mr. COOPER. What good is a mileage book if a man has got to pass from one State to another in order to use it?

The CHAIRMAN. That is the bill.

Mr. COOPER. I know, but if the bill passes, a man has got to go from one State to another.

Mr. THOM. I understand, if you will permit me, that in the presentation made here by the gentlemen in favor of this book, they are asking an amendment of the pending bill in that regard.

Mr. COOPER. In that respect you will agree with me that if the mileage book were only good when you passed from one State to another you would not accomplish the purpose?

Mr. THOM. Yes, sir.

Mr. JONES. If there is a proposed amendment to this bill, I should like to know what it is, so that we can understand these witnesses in the light of the proposed amendment.

The CHAIRMAN. It was proposed by the suggestion of those who were here; it was not presented in any definite or tangible form; merely a suggestion.

Mr. RAYBURN. Is the interpretation of the witness your interpretation?

Mr. THOM. My interpretation is that under this bill there is no requirement to issue anything but a mileage book good for an interstate journey.

Mr. LEA. The proposed amendment, as I understood it, was to strike out the word "interstate," in line 12, and the word "other," in line 13, making these tickets good on all carriers by rail subject to this act.

The CHAIRMAN. That was the essence of it. We do not have it in definite form.

Mr. LEA. No.

Mr. RAYBURN. In that amendment you will probably run into the short-line railroads?

The CHAIRMAN. They will run into us in a few moments if they get an opportunity.

Proceed, Mr. Bevington.

Mr. BEVINGTON. I am still dealing with the wholesale principle.

Buyers of one-way tickets from New York to San Francisco, 3,169 miles; Chicago to San Francisco, 2,261 miles; or from New York to Denver, 1,934 miles, or between thousands of other long-distance points, pay for more transportation at one time than the commercial traveler buying a 1,000-mile ticket, and are, therefore, according to the argument of the commercial travelers' organizations, entitled to a lower rate per mile than the commercial traveler. The purchasers of these long-distance one-way tickets cover many times the mileage in one year that is covered by the combined traveling men's forces during the same period. If the argument holds good in one case it holds good in the other, and this would mean that the long-distance traveler between two given points, buying a regular one-way ticket, which is used within from two to six days from date of purchase, should be put on an equal footing with a purchaser of one or two thousand miles of transportation in the form of a mileage ticket, which is used between a multiplicity of short points at any time within one year from date of purchase. Thousands of round-trip tickets are sold, each of which covers more than 5,000 miles of travel by rail in the United States.

The argument has been advanced that because reduced fares are authorized for conventions and meetings held at specified points commercial travelers should be accorded the same or lower rates of fare. Commercial travelers are retail travelers. They travel individually to thousands of destinations and are therefore not comparable to large bodies of people traveling together to a single destination to attend conventions and meetings.

Nor are tourist fares to mountain, seashore, and other resorts, authorized from time to time for the purpose of stimulating travel, in any way analogous to mileage-ticket reductions. Convention and tourist fares are authorized to but a comparatively few points and for limited periods only, while the mileage reduction would apply between all points in the United States and every day in the year.

Mr. BURROUGHS. Just what is the bases of your distinction—I mean between the excursion ticket that you have referred to, issued in the case of conventions, and the mileage book?

Mr. BEVINGTON. A mileage ticket would be good, I take it, under this bill between any two interstate points of travel in the United States.

Mr. BURROUGHS. Do you consider that a sound distinction, from the public viewpoint, for giving a lower rate in one case and a higher rate in the other?

Mr. BEVINGTON. As between conventions and the mileage tickets?

Mr. BURROUGHS. Yes, sir.

Mr. BEVINGTON. Yes, sir. The reductions authorized for conventions are confined to a comparatively few points; they are confined to the convention points only. They are not made to the thousands of intermediate points; they are made to one particular point; and so the tickets are only on sale for two days or one day, and then it is ended; but this ticket would be on sale

every day in the year, and would be good between any two interstate points in the United States.

Mr. BURROUGHS. I can see that there is a difference, but is there a sound distinction from the public viewpoint? For instance, if I am going to a convention in Chicago, and I buy an excursion ticket at a reduced rate, the gentleman who sits right beside me in the train pays the regular fare, and I do not see from the line of your argument or the public standpoint where there is any sound reason for that discrimination.

Mr. BEVINGTON. Well, that discrimination has been recognized by the Interstate Commerce Commission. While it may be viewed as a discrimination, they say it is not a discrimination, and that we are privileged and do every day in the year, perhaps, authorize convention rates.

Mr. BURROUGHS. I understand that the Interstate Commerce Commission has decided that way, but if that is the ruling in those cases, that it is not held to be a discrimination, I do not at the moment quite see where the distinction comes in between that case and the case of the mileage ticket.

Mr. BEVINGTON. Well, the convention rate is more or less on the wholesale theory, because there are thousands of people who attend some conventions, like the Mystic Shrine and the Knights Templar; they are attended by tens of thousands of people.

Mr. BURROUGHS. I understand from your statement that the wholesale idea is not a sound principle?

Mr. BEVINGTON. No; it is not. We do not believe it is. I just mentioned that incidentally.

Mr. HOCH. I can appreciate the force of your argument with reference to conventions. You may argue that there is something in the wholesale principle involved there, but I do not see the distinction you draw between the general tourist rates you offer, where it is not a matter of going any particular day, nor is it a matter of going to any particular point. The tourist rates cover a very wide section of the country, the seaside resorts, the mountains, all along the country, and you may go to-day, a week from to-day, or a month from to-day. What distinction is there there?

Mr. BEVINGTON. Those rates are confined to a very limited period and are seasonal, for one thing, and are limited to certain destinations, little seaside resorts and mountain resorts—comparatively few of those. They are negligible as compared with the destinations that could be authorized under this bill.

Mr. HOCH. That is only a matter of quantity, you might say. It does not go to the principle involved.

Mr. BEVINGTON. Another thing, those convention rates and the tourist fares to these mountain resorts have little or no effect on the everyday commercial traveler—the ordinary travel—while this mileage rate might affect the commercial travel and reduce our revenue on such travel up to 50 per cent. If we make a rate to the White Mountains, practically no commercial business is affected by that rate; and we may, therefore, in order to stimulate travel to the White Mountains, put in a reduced round-trip rate that will invite traffic.

Mr. HOCH. Unless you can afford to carry it, you do not want to stimulate travel. Why stimulate it to carry it at a rate that is not a compensatory rate?

Mr. BEVINGTON. We do not know that the excursion rate is not a compensatory rate. Where we can fill our trains and earn four or five dollars a train mile by having a face in every window we can afford to run that train. If we could fill all our trains we could afford to make a lower rate.

Mr. HOCH. Exactly. The same argument is made for this proposition. I am trying to ascertain whether there is any distinction. I do not see where you have presented any distinction in the matter of the tourist rate and the ticket proposed in this bill.

Mr. BEVINGTON. If we can fill our train to a certain destination—instead of having 50 people on the train we may have 200—and if we can have 200 people on the train and get those people concentrated in a given place we can afford to run the train for less than we can afford to run it for if we only have 50 passengers on it.

Mr. COOPER. I want to ask you some questions. Do you believe that the sale of the mileage book under the provisions of this bill will be discriminatory? For instance, I buy a ticket for 300 miles' travel in a certain State, and you buy a ticket for 310 miles' travel, we ride in the same train and might occupy the same seat, and you are privileged to use this mileage book because you are going 310 miles, but I am not entitled to the privilege because I am only

going 300 miles. You go over the State line and I do not. Would not that be a discrimination?

Mr. BEVINGTON. I think it would be; yes, sir.

Mr. SANDERS. Do you consider this Senate bill as it is now written as providing a uniform passenger rate per mile throughout the country?

Mr. BEVINGTON. No, sir. I have just been trying to explain what would happen to us if the commission should authorize a rate of 2.5 cents a mile or any reduction from the present basic rate.

Mr. SANDERS. The bill as originally drawn did provide a uniform rate per mile of 2.5 cents throughout the country. That bill was amended so as to provide that there should be—

Mr. BEVINGTON (interposing). A just and reasonable rate.

Mr. SANDERS. A just and reasonable rate per mile good on all trains. You do not construe that to mean that the per mile rate is the same?

Mr. BEVINGTON. I have read it that way; yes, sir.

Mr. SANDERS. That is the way I have read it. My construction of the present language is that it provides for a uniform rate per mile throughout the country on every interstate passenger movement?

Mr. BEVINGTON. Yes, sir.

Mr. SANDERS. And that if the bill were so amended as to cover intrastate as well as interstate travel, and not amended in any other particular, that the law would then direct the Interstate Commerce Commission to require every carrier throughout the country to honor these mileage tickets, and that it would be at a uniform rate per mile. That construction, however, is not agreed to on all hands.

Mr. BEVINGTON. That is my understanding of it.

Mr. DENISON. As I understand it, if this bill should become a law, these mileage books will be so prepared that when they are presented to a conductor, regardless of what road it is on or what part of the country, he would tear off of the ticket or off the book the number of miles that the passenger wants to travel, would he not?

Mr. BEVINGTON. Yes, sir; if it were a mileage book.

Mr. DENISON. And the fare would be uniform everywhere? In other words, he would tear off the same amount for the same number of miles' travel, without regard to what road it was on or what part of the country?

Mr. BEVINGTON. Yes, sir; if it were a mileage book.

Mr. DENISON. I mean a mileage book. If we had these mileage books and a man got on the train at East St. Louis and wanted to go to St. Louis, that is an interstate trip, the conductor would have to take off on the mileage basis?

Mr. BEVINGTON. Yes, sir.

Mr. DENISON. I think it is about 2 miles across there?

Mr. BEVINGTON. Yes, sir; that is about right.

Mr. DENISON. And a man could go from East St. Louis to St. Louis on the basis of about 2 miles' travel?

Mr. BEVINGTON. Yes, sir.

Mr. DENISON. Of course, as a matter of fact, a passenger that goes across there and pays the regular fare has to pay a great deal more than that. I think it is 50 cents. With a mileage book he could go across there for 5 or 6 cents?

Mr. BEVINGTON. Yes, sir. Of course, that is a bridge and the rate is a little higher than it is on the main line.

Mr. DENISON. I know, but there is no exception made under this mileage book?

Mr. BEVINGTON. No, sir.

Mr. DENISON. Or on the mileage basis?

Mr. BEVINGTON. No, sir.

Mr. LEA. I do not know if I understand your position as to whether or not this bill, if enacted, would require a uniform rate per mile throughout the country. You think it does require that?

Mr. BEVINGTON. That is my interpretation of it.

Mr. LEA. As I understand the problem we have a classification of roads by which the rates vary on different classes of roads per mile?

Mr. BEVINGTON. In certain States.

Mr. LEA. In one place 3 cents a mile and in another place 4 cents a mile. How could you assume that the just and reasonable rate per mile on a 4-cent road would be the same as on a 3-cent road? In other words, in order to prescribe a just and reasonable rate per mile, you would have to have reference

or relation to the cost of transportation on these various classes of roads, and you would have to charge more per mile on one class of roads than on another.

Mr. BEVINGTON. Yes, sir; that would be the thought. You could not have a just and reasonable rate per mile on a road ignoring the cost of transportation on that class of road; no, sir. I think not.

Mr. LEA. As to the form of these mileage tickets, the form would be a matter of regulation by the commission, would it not? There is nothing in this law that requires a detached coupon to represent every mile of travel in the United States.

Mr. BEVINGTON. You would have to have that if the rates were uniform.

Mr. LEA. If they were; but here the commission has the right to make such just and reasonable rules and regulations for their issuance and use as in its judgment the public interest demands. Now, if we must have a varying price per mile in order to have a just and reasonable rate, then, to follow out the accomplishment of that purpose, the Commission must issue a form of mileage book that will conform to that necessity. Is not that true?

Mr. BEVINGTON. If the commission has power to change the rate, that would be true.

Mr. LEA. I was simply trying to get your construction of this bill, because we have a difference here apparently among the witnesses as to what this bill means with reference to that point.

Mr. BEVINGTON. My understanding is that this bill, if enacted into law, would fix a uniform rate, and the commission is directed to prescribe the conditions under which the ticket shall be sold.

Mr. HAWES. The bill does not say that.

Mr. HOCH. I understood your answer to Mr. Denison's question to be that the conductor would have to collect the number of mileage coupons, or whatever you call them, that the traveler was traveling on the particular road he was on. Was that your answer?

Mr. BEVINGTON. He was dealing with East St. Louis and St. Louis, and I think he had in mind the higher charge across the bridge.

Mr. HOCH. I am not talking about the mileage charged; I want to get at the practice.

Mr. BEVINGTON. You mean as to the equalizing of the mileage between the long and short lines?

Mr. HOCH. I mean whether it would be simply a question of taking up the number of mileage coupons that the man was traveling upon that particular road or not. To illustrate, suppose here are two competing roads between two points, A and B, and one of them is 100 miles and the other is 150 miles; do you mean to say that if a man went on one road they would take 150 miles and if he went on the other they would take up 100 miles, and that that would be necessary?

Mr. BEVINGTON. That would rest in the discretion of the railroad as to whether they desired to meet the short line rate.

Mr. HOCH. Was not that the uniform practice under the old mileage books, that it took up the number of miles to meet the competing rates?

Mr. BEVINGTON. Generally speaking, that is true; but as is done in the construction of the rates to-day, all railroads between two given points do not maintain the same rate for various reasons. One may be so circuitous or its service may be so inferior by its longer route that it could not control any of the traffic and therefore it maintains a higher fare. Further, if it were to meet the short line fare, that would necessitate reducing a large number of intermediate local points under the interstate commerce act.

Mr. MAPES. In the use of this scrip book, especially if there happens to be a change of conductors between these competing points, they would pull off the whole 150 miles, would they not?

Mr. BEVINGTON. Yes. That is an internal arrangement that the railroads have.

Mr. MAPES. So that the railroad, unless the traveler is very careful and knows how to use his scrip book, under the present plan, makes over what the regular ticket would cost, is not that true?

Mr. BEVINGTON. Yes, sir; during the period of Federal control and since, in the use of these scrip books, arrangements are made, where they are presented on the train, to have the first conductor on through sleeping-car lines detach the value of the transportation through to destination, although in many cases it may be on another railroad. So that the situation is always maintained on a parity as between all the roads competing for that traffic.

Mr. MAPES. Yes; but take two competing points such as Mr. Hoch called attention to, and if on the 150-mile road there is a change of crew on the way the first conductor will pull his part of the 150 miles and the second conductor will pull his part—

Mr. BEVINGTON. No, sir.

Mr. MAPES (continuing). Unless the user of the scrip book goes to the ticket office and has the ticket agent give him a through ticket on his scrip book.

Mr. BEVINGTON. No; if between these two given points the 150-mile railroad had previously decided to equalize the 100-mile railroad, then they would instruct their conductor at the initial point to detach 100 miles and give the passenger an exchange check which would be honored by subsequent conductors through to destination.

Mr. MAPES. Was that true during Federal control?

Mr. BEVINGTON. Yes, sir.

Mr. MAPES. I did not know that.

Mr. HUDDLESTON. Mr. Bevington, it seems desirable that we should know exactly what this bill means. I note that the expression "mileage tickets" is used in line 11 on page 1, and at the bottom of the page it provides that such tickets may be required to be issued for any distance not exceeding 5,000 miles, etc. The phrase "mileage tickets" has a technical meaning. You interpret that to mean what have heretofore been known as mileage tickets, do you not?

Mr. BEVINGTON. Yes.

Mr. HUDDLESTON. Let me see if I understand just what those mileage tickets were. A mileage ticket heretofore in use was a continuous piece of paper divided into units, each unit being good for one mile of travel over the road or group of roads issuing the ticket?

Mr. BEVINGTON. Yes.

Mr. HUDDLESTON. Is it possible to have a "mileage ticket," according to your interpretation of this bill, which will not consist of a piece of paper divided in some way into separate units, each unit being good for a mile's travel over the road where used?

Mr. BEVINGTON. An interchangeable mileage ticket good on all railroads in the United States, even though confined to interstate travel, is wholly impracticable and impossible. It would be physically impossible to use such a ticket.

Mr. HUDDLESTON. That is not quite the question. I ask whether you could conceive of anything as being referred to in this bill except a continuous piece of paper divided into units, each unit being good for 1 mile's travel over a railroad? Can you find any other meaning that this bill has?

Mr. BEVINGTON. No, sir. Of course, you are referring to the form and style of the ticket.

Mr. HUDDLESTON. Yes; and its value or significance; what it is good for. I am trying to get at this, Is it possible in the light of the use of the phrase, "mileage ticket," to have a ticket or other paper issued to a holder which is not good for transportation by miles, or good for so many miles of transportation or which would authorize a carrier to whom the same was presented to make an additional charge as a condition for carrying the holder a mile?

Mr. BEVINGTON. I can not conceive of any plan that would be workable that did not involve an arrangement for detaching the number of miles that the passenger traveled. He might travel 3 miles or 150 miles.

Mr. HUDDLESTON. In other words, a ticket which would authorize the carrier to make an additional charge for carrying the passenger would not be a "mileage ticket," would it?

Mr. BEVINGTON. It might be.

Mr. HUDDLESTON. Well, how could it be? If it is good for miles, how can the carrier say it is not good for miles? Either it is good for miles of travel or it is not good; if it is not good, is it not a mileage ticket, and if it is good for transportation by miles, how can the carrier charge anything additional?

Mr. SANDERS. The language of the bill says it must be good.

Mr. HUDDLESTON. If it is good for a certain number of miles' travel, how far can a man travel for each mile unit? That is what I am trying to get at.

Mr. BEVINGTON. How far can he travel for each mile used?

Mr. HUDDLESTON. Yes; if a unit of the ticket is not good for a full mile, how far can he travel on the unit? Suppose I present 10 miles of this mileage to a carrier, no matter what its rate may be, what is that good for under this bill if it is not good for 10 miles of travel on that road?

Mr. BEVINGTON. I think it would be good for 10 miles.

Mr. HUDDLESTON. Can you think of any other interpretation that could be given to this language?

Mr. BEVINGTON. No; I can not.

Mr. HUDDLESTON. Now, reference has been made to the second clause of section 2 as authorizing an additional charge under the language "the commission shall make and publish such reasonable rules and regulations for their issuance and use as in its judgment the public interest demands." Does not that refer to such matters as checking baggage, identification, continuous use, with the bare possibility of making this ticket not good on certain special, fast trains, and some matters of that kind? Can that be interpreted to justify the commission in requiring the holder of one of these tickets to pay something to the carrier in addition to the ticket as a condition for riding at all? Do you see that field for interpretation?

Mr. BEVINGTON. I think not. If he has a 100-mile mileage ticket he can travel 100 miles without additional charge, so far as I can see, unless it may be construed that if he occupies a sleeping car the surcharge must be paid—I do not know about that—and if he rides on a limited train there may be excess charges.

Mr. HUDDLESTON. The surcharge is paid as the cost of the sleeping-car service and is not within the mileage, so I do not think that is an exception.

Mr. COOPER. Mr. Bevington, you do not hold that a man could travel on an extra-fare train on this mileage?

Mr. BEVINGTON. No, sir.

Mr. COOPER. I believe Mr. Huddleston asked that question, did you not?

Mr. HUDDLESTON. No; I suggested that as an exception.

Mr. JONES. Mr. Bevington, assuming it is advisable to pass some legislation along the policy of this bill, would it not be better to change the whole proposition to a scrip book rather than a mileage book?

Mr. BEVINGTON. I was just going to again stress the point I tried to make yesterday, that a mileage ticket requiring the detachment mile for mile of travel is impracticable. A mileage ticket as a cross-country proposition is impracticable, unless it were exchanged at the ticket office for a ticket. Then it would be practicable, because, as I stated yesterday, there are more than 14,000 different routes from New York to San Francisco. There is not any human being who could construct a mileage table that would set out all of the short-line mileages between all the points in the United States so as to have all the roads on an equality as to the detachment of mileage, as they are to-day on an equality as to the rate.

Mr. JONES. The scrip book would obviate all those criticisms, would it not?

Mr. BEVINGTON. Yes, it might. It would assist.

Mr. JONES. Then, if a scrip book were issued requiring it to be given in exchange for a ticket—you spoke a short time ago about the salesmen objecting to the exchanging of the scrip book or the mileage book for a ticket—would there be any substantial objection upon the part of the traveling salesmen or the traveling public if the effect of the transfer was to give them a cheaper ticket than they could otherwise get? Is not their main purpose to get cheaper transportation, and would they not be willing to make the exchange if that were a regulation of the commission?

Mr. BEVINGTON. I understand the commercial travelers want both. They want the reduction in the fare and also a ticket that is good on the train.

Mr. JONES. A lot of us want both, perhaps, and a lot of us want things that probably we can not get; but what, in your opinion, would be the extent of the objection if the commission did issue a ruling that the scrip must be exchanged for a ticket?

Mr. BEVINGTON. I think the objection would come from some of the commercial organizations, although we have had mileage tickets on sale before this that it was necessary to exchange for tickets before they were good for passage or the checking of baggage.

Mr. JONES. Is there any other way that the railroad company, assuming they issued a scrip ticket, could protect itself against abuses in the transportation of baggage and other things, except by requiring its exchange for a ticket?

Mr. BEVINGTON. There is absolutely no other way.

Mr. JONES. Then if the traveling men or the traveling public got a reduced scrip ticket or a script ticket at a reduced rate, would they not be content if the commission should issue a ruling that the scrip should be exchanged for a ticket, so as to protect the railroad company from abuses growing out of the use of such a ticket?

Mr. BEVINGTON. I imagine that if the commission should so decree that a good many of them would be content, but others might not.

Mr. BURROUGHS. Quite apart from the specific terms of this bill, is it not entirely practicable from an administrative and operative standpoint to issue some sort of an interchangeable mileage book, having the Interstate Commerce Commission, in fixing a fair and reasonable rate, fix that rate at, say, 15 per cent or 25 per cent or 33½ per cent below existing rates?

Mr. BEVINGTON. Yes; that could be done.

Mr. BURROUGHS. I do not know whether this particular bill would allow any such thing as that to be done or not, but I was simply trying to get at your viewpoint as to whether that would be a practicable thing to do from an operative standpoint.

Mr. BEVINGTON. I think it could be done; yes, sir. Of course, you can issue any kind of a ticket and sell it at any percentage of reduction you please.

Mr. BURROUGHS. Then the form of the book would be prescribed by the commission in such rules and regulations as it might formulate in connection with the issuance of the book itself?

Mr. BEVINGTON. I think that is what the bill prescribes.

Mr. JONES. But, following out Mr. Burroughs's inquiry, that would mean that a passenger could travel, for instance, 10 miles on any road for the same price, if it was a mileage ticket, irrespective of the curvature or the grade or the cost of operating or anything else?

Mr. BURROUGHS. No; it would mean, as I understand it, that the holder of one of these books, if he is traveling over a road where the rate is 4 cents a mile, would pay a proportionately higher rate than he would when he came to travel over a road where the rate was the regular basic rate of 3.6 cents a mile.

Mr. JONES. That was my theory on the scrip ticket, but I do not see how it is practicable on the mileage ticket. I think that could be worked out on a scrip ticket, but I do not think it could be worked out on a mileage ticket.

Mr. BURROUGHS. That is the question I was asking the witness, as a practical railroad man, whether that was practicable from an operative standpoint, and I understand him to say he thinks it is.

Mr. JONES. I do not believe the witness means that unless I am mistaken.

The CHAIRMAN. On a mileage bas's?

Mr. BURROUGHS. That was my question.

The CHAIRMAN. I think he has denied that several times, Mr. Burroughs.

Mr. BEVINGTON. No; not on mileage but on a scrip ticket it would be feasible and practicable; but not on a mileage ticket. There is not any interchangeable mileage ticket that could be conceived that could be honored by all the roads in the country, at equalized fares; that is, on an equalized basis that would put all the roads that desired to meet the short-line rate on an equality, because there are so many thousand different routes that there would be no way of indicating to the agents or the conductors or to the public which of those routes equalized the short-line rate.

Mr. BURROUGHS. Then, if I understand you now, the only way that could be done would be by the issuance of what you call a scrip book?

Mr. BEVINGTON. That is correct.

Mr. BURROUGHS. And the practical way in which it would be accomplished with the scrip book would be for the holder to exchange his scrip at the window for a ticket?

Mr. BEVINGTON. Yes, sir.

Mr. BURROUGHS. In each case?

Mr. BEVINGTON. Yes, sir.

Mr. BURROUGHS. And would preclude, as I understand you, his use of it in the way in which the scrip book is now used, oftentimes, namely, by presenting it to the conductor on the train?

Mr. BEVINGTON. Yes, sir; and we desire to avoid that in any event.

Mr. JONES. What do you understand the words "joint interchangeable" to mean?

Mr. BEVINGTON. The word "joint," I take it, as we apply that word, means that the book should be the issue of all the railroads participating in it.

Mr. JONES. That is, interchangeable. What does the word "joint" mean?

Mr. BEVINGTON. I understand it is to be a joint book, one book, good on all railroads.

Mr. JONES. Now, does it not mean this, if it means anything: It means that the person who has a book of that kind in traveling from point A to point

B over two roads, road B being a mountain road or a short-line road that has a 5 cents per mile passenger rate and road A being a trunk line that has the 3.6-cent rate, that the issuing or initiating road or the ticket agent at the point where he gets on, will issue a ticket through to destination on road B?

Mr. BEVINGTON. Yes.

Mr. JONES. How are you going to arrange about the difference in the passenger rate between those two roads?

Mr. BEVINGTON. Because the scrip book being money, you pay for your ticket in money according to the rate, and the rate is fixed, taking into consideration—

Mr. JONES (interposing). Then the ticket agent would have to know the rates charged by all the railroads in the United States?

Mr. BEVINGTON. He knows that now. He has to know now in order to sell a ticket from his station to any other station—he must know what his rate is, and, of course, he has tariffs that tell him that; but he has nothing that would tell him the mileage from Newark, N. J., to San Francisco.

Mr. JONES. Then in your opinion the use of the word "joint" has significance in this bill?

Mr. BEVINGTON. I understood that to mean that it was to be a joint ticket issued by all these railroads. That is the way we understand it. We issue joint tariffs.

Mr. JONES. Is not that what the word "interchangeable" means? I understand your joint rates on freight. I understand what that is.

Mr. BEVINGTON. I understand that these two words mean different things. The word "joint" means that the ticket is to be issued jointly by all the railroads concerned; and the word "interchangeable" means that the ticket so issued jointly by all these roads must be interchangeable as between all of them.

Mr. JONES. What do you mean by issuing a ticket jointly by all the roads?

Mr. BEVINGTON. Just as we issue a joint tariff and just as we have issued mileage tickets in the past. They were the issues of certain railroads and were good over certain railroads. They need not necessarily be of joint issue, however. They could be the issue of an individual railroad.

Mr. JONES. You do not use the word "interchangeable" in your freight tariffs, but you use the word "joint" there, and, while possibly some other witness might enlighten me, I can not yet see the distinction between the two words "joint" and "interchangeable" so far as they apply to passenger tariffs. If it is interchangeable, it means it can be used on any road.

Mr. BEVINGTON. If the word "joint" were left out, it would not detract from the intent, I guess.

Mr. JONES. That is what I am trying to get at—whether it does or not.

Mr. BEVINGTON. I do not think it means much, if anything.

Mr. JONES. That is what I am trying to find out—whether it has any significance at all.

Mr. BEVINGTON. I think not.

Mr. BURROUGHS. Just one more question to clear up this matter in my own mind as to the scrip book. I understood you to say a while ago that the present scrip book which is now in use may be presented by the holder to the conductor on the train without the necessity of presenting it at the ticket window and getting a ticket in exchange for it. Am I right about that?

Mr. BEVINGTON. Yes; it may be presented and honored by the conductor within a very limited territory; not as would be contemplated here—to have it good between any two points in the country. Where there is a through car line as between Washington and New Orleans or Washington and Atlanta and a man gets on the train with his scrip book the conductor takes out the rate to Atlanta; but if that man got on the train and was going from Washington to San Francisco the initial conductor could not equalize that, because he has no information about the equalization of the rate.

Mr. BURROUGHS. As you first stated it, I understood there was no limitation. Now, what is the limitation?

Mr. BEVINGTON. The limitation is as to through car lines. First, the tickets are honored through between any two local points on a given railroad, notwithstanding there may be several divisions and several conductors may handle the train. Second, they are honored between through car lines that are interline movements over two or more railroads, as in the case just cited, Washington to New Orleans. There if the passenger gets on the train and presents his scrip book the fare from Washington to New Orleans is detached and the

passenger is given an exchange ticket, which is honored by subsequent conductors; but in the great majority of cases the tickets are exchanged at the ticket office in order to secure their Pullman accommodation. It is not any great hardship nowadays to exchange a ticket at the ticket office.

Mr. BURROUGHS. I did not understand, as you stated it in the first place, that there was that limitation upon the use of the scrip book. I gathered from what you said that your position was that the scrip book as now issued met all requirements of the proponents of this legislation, with the exception of the fact that it did not give a reduced rate.

Mr. BEVINGTON. Well, generally speaking, it does meet all the requirements except that a passenger could not get on a train at Washington and pay his fare to the first conductor and have the fare to San Francisco equalized; but the same passenger could go to the ticket office and have the necessary amount of scrip detached for a ticket from Washington to San Francisco via New Orleans or via any other authorized route. In other words, this scrip is money, and if he goes to the ticket office they get the benefit of the short-line rate in every case.

Mr. THOM. Mr. Chairman, may I interrupt just a moment? Mr. Huddleston and Mr. Jones and other gentlemen of the committee have brought out very clearly what we believe to be the true, legal interpretation of this bill. We draw a distinction between a mileage book and a scrip book.

It is a distinction that is well known in practice. I have not a mileage book in my possession, but I have a scrip book. This scrip book has coupons in it, each one of which is good for a certain number of cents. They are divided into two denominations, 3 cents and 1 cent, the 3 cents being the greater bulk of the book, as that will be used to the greatest extent, the 1 cent being put into the book for the purpose of making change, and the use of that is to enable the holder to buy with the scrip the same thing that he could buy with money. The mileage book is an entirely distinct thing. It calls for, however expressed, so many miles of travel; it is not a money transaction at all. It is a mileage transaction. I have been furnished with a mileage book, and from that you will see that the mileage book calls for so many miles of travel.

Mr. MAPES. One of the witnesses before the committee advocated the sale of a book which could be used in place of money for the payment of, among other things, excess baggage charges. Could this scrip book be used for that purpose?

Mr. THOM. No; it is not good for that. It relates simply to the transportation of the person.

The CHAIRMAN. Could not the scrip book be used for that purpose?

Mr. THOM. No, sir; not for the payment of excess baggage, as I understand it.

The CHAIRMAN. Why not? That is money for baggage as well as for fare.

Mr. THOM. These gentlemen tell me that I am wrong about that.

The CHAIRMAN. A mileage book can not be used?

Mr. THOM. No. I think that the interpretation of this act put upon it by the gentlemen I have mentioned is made entirely clear by the fact that the mileage ticket must be universally interchangeable on all roads in the United States.

The reason I interrupted the witness at this time was to ask the privilege of reading into the record a telegram which I have received, as I received one yesterday bearing on this subject, from one of the New England roads. It is sent by Mr. N. W. Hawkes, who is the chairman of the New England Passenger Association, and reads as follows:

"In connection hearing mileage book, bill 848, President Todd, Bangor & Aroostook, requests attention be called fact Bangor & Aroostook basic fare is considerably in excess 3.6 cents, and in his opinion situation as affecting Bangor & Aroostook very serious, and also feels should be especially called attention House committee."

I filed on yesterday a letter showing that the basic fares on the Bangor & Aroostook were 4.5 cents and 5.4 cents per mile. If this mileage book is used as contradistinguished from a scrip book, the Bangor & Aroostook would be obliged to accept on its line the mileage book issued by the Pennsylvania Railroad, and that is what Mr. Todd is protesting against here, because of the immense effect that would have upon his revenues.

I wish merely to call that to the attention of the committee.

Mr. HOCH. In the use of the scrip book, however, that would all be taken care of if there were simply a percentage reduction?

Mr. THOM. In other words, if you bought a ticket over a route in which the Bangor & Aroostook formed a link the amount of scrip could be taken out to recompense the difference in the mileage rate.

Mr. HOCH. Do you see any reason why a scrip book could not be issued which would take into account these various rates and at the same time accomplish everything that the proponents of this measure want to accomplish?

Mr. THOM. I think the proponents of this measure want to accomplish more than the mere difference in fare. They want a universal fare, good everywhere, in the first place. In the second place, they want to use it on trains everywhere.

Mr. HOCH. If the scrip is money, why can not it be accepted by the conductor as the payment of fare the same as a ticket?

Mr. THOM. The scrip book can be accepted by the conductor. In fact, the one which I have here in my hand says:

"The coupons contained herein will be accepted at authorized tariff fares and charges, as follows: (a) Passage on trains, in coach, parlor or sleeping car to the extent of fares quoted in tariffs held by conductor to whom tendered."

Now, that can not be used, however, for the purpose of equalizing fares on different routes without imputing to the conductor a knowledge of the possible equalization situation which he could not possibly have. It would have that practical difficulty.

Mr. MAPES. Is that scrip book transferable universally?

Mr. THOM. It is good to the bearer; yes, sir.

Mr. MAPES. A person going only 200 miles could buy one of those books and then sell it?

Mr. THOM. It is good in the hands of bearer.

Mr. BEVINGTON. There is no reason why it should not be, because it is money.

Mr. HAWES. In the matter of the conductor using the scrip not having the information outside of his district, there would be nothing to prevent the conductor, where a man got on at an intermediate point, taking from the scrip book sufficient mileage to carry him to a division point, for instance, where at some point it could be exchanged for a through-trip long-distance ticket?

Mr. THOM. No; it might. One of the objections that the carriers have had to the scrip book is this. Of course, in the vast number of men who handle transportation on the trains there are men of varying integrity, and if, instead of requiring the scrip book to be exchanged at the office, it can be used on the trains, there is nothing to prevent the misuse of that book by tearing out fewer scrip coupons than correspond with the journey, and the loss to the carriers in a country in which I once represented one of these railroads was tremendous from that source. It was stated that it was not an unusual thing to have the scrip book handed to the conductor with a \$1 bill or a \$5 bill inside, and the result would correspond, in the case of a dishonest conductor. Of course, a great many men would in no sense be open to that kind of thing, but in dealing with a nation as large as this, with a great variety of men, that abuse is one which is not readily prevented, and the temptation is great for its use in respect to the misuse of the scrip book.

Mr. HOCH. Is not that true with reference to the payment on the trains?

Mr. THOM. Yes, sir; that is true. That is avoided. There is a penalty put on that as far as possible. They charge a little more on the train than otherwise, so as to make an inducement to the traveler to buy his ticket.

Mr. HOCH. That does not prevent the dishonest conductor?

Mr. THOM. It does not.

Mr. HOCH. The same thing is true with the cash payments?

Mr. THOM. Except the extent of it; it is not as extensive.

Mr. JONES. Are there not a number of abuses that can be had in the use of a scrip book on the train which justify a ruling either by the commission or otherwise requiring the scrip to be exchanged for a ticket?

Mr. THOM. We have always felt so. I am speaking of years ago, when I represented an individual road and where these questions were at times very acute. One of the controversies we had was the effort to have the scrip book used at the windows only, so as to have the money held by a bonded man whose record would have to correspond with the money he received, and that thereby the opportunity for misuse would be reduced to the minimum. There is another difficulty also which in those days we used to find upon every train. That is, in a crowded train, that for the conductor between stations near to each other to go through and calculate a number of these things, to make proper entries,

and all that sort of thing would so delay the performances of his administrative duties as to make it really difficult in the operation of the train.

Mr. CHAIRMAN. I want you to understand that in anything I say I do not want to appear in the attitude of an advocate. I want to appear merely in the position of putting before the committee such facts as we may have so they may feel that we have thrown the case open before them to the best that we have been able to do and leave the decision to them.

Mr. HUDDLESTON. Can you tell us, Colonel Thom, what, in the time these mileage books were in use, the loss to the carriers was because of their use?

Mr. THOM. The mileage book or the scrip book?

Mr. HUDDLESTON. The mileage book. What did the carriers lose because of the use of the mileage book instead of dispensing with it?

Mr. THOM. The witness here is able to tell. I do not know. It is in his statement.

Mr. HUDDLESTON. I do not recall exactly what he said, but I am under the impression that it was about 10 or 15 per cent.

Mr. THOM. I have not the specific information on that subject.

Mr. HUDDLESTON. The statement which Mr. Bevington made estimated the loss that would arise if mileage books were issued in the future, and it was based upon previous experience—as I recall, he gave it as 10 per cent loss, or something like that, and said it would be more than double under the universal mileage book. I am wondering, in view of what has been said against the use of the mileage ticket, why the carriers ever used them. It appears from the statements which have been made that there is nothing advantageous or beneficial to the carriers in the use of them. Why did the carriers ever use them?

Mr. THOM. They used them, as a rule, because there was a public demand for their use. They put them in to try to make an experimental test, and in view of the public agitation. So far as I know, it has never proved a scientific and proper method.

Mr. HUDDLESTON. Nor a profitable one?

Mr. THOM. Nor a profitable one; that is my belief.

The CHAIRMAN. Gentlemen, the hearing will now be adjourned until 10 o'clock to-morrow morning.

(Thereupon, the committee adjourned to meet to-morrow, Thursday, March 30, 1922, at 10 o'clock a. m.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

Thursday, March 30, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. If the witness will proceed, we will continue the hearings.

STATEMENT OF MR. E. L. BEVINGTON, CHAIRMAN TRANSCONTINENTAL PASSENGER ASSOCIATION, CHICAGO, ILL.—Resumed.

Mr. BEVINGTON. Mr. Chairman, very little remains to be said.

The lowest rate per mile made by a carrier is the one which all railroad patrons desire to have applied to them.

Reduced rates for mileage tickets have often been used as a precedent to bring about further reductions in rates for other classes of travel. When reduced rates were authorized for mileage tickets and for organized traffic they were influential, if not controlling, in bringing about reductions in the basic rates per mile.

In the hearing before the Senate committee in June, 1921, representatives of the commercial organizations admitted that the economic conditions of the country were responsible for the inability of the men to sell goods—as one representative of these organizations expressed it: "They could not sell one dollar's worth of merchandise for 50 cents." This makes it clear that the railway fares are not responsible for the inactivities of commercial salesmen, and is borne out by the cost of their travel, based on an item appearing in the argument of a representative of the commercial travelers of the country at the Senate hearing. He stated that the average distance traveled by salesmen each day was 50 miles. This would represent an average outlay of \$1.80 per

day for railway fare. If reduced 20 per cent, the saving would be but 36 cents per day, or \$2.16 per week of six days, or less than \$10 per month. This is not a prohibitive item.

At the same time, traveling organizations ask the railroads to contribute this much to the traveling man to enable him to stimulate business, which he admits is speculative. In other words, they ask the railroads to take all the chance, while they take no chance.

Mr. HUDDLESTON. May I interrupt to make the suggestion that the request is not that the contribution be made by the railroads but by the general public using transportation which would be required to make good to the railroads any loss that they may suffer because of having given rates to traveling salesmen at an out-of-pocket charge.

Mr. BEVINGTON. Yes, sir. Of course, in the end someone has to pay; but, under present conditions, the present rate fabric is not yielding to the railroads the income contemplated by the transportation act, and, therefore, if this interchangeable mileage ticket is placed on sale and the revenues of the railroads on that account are reduced from \$50,000,000 to \$150,000,000 annually, our position is that we would be simply taking that much out of our pocket and giving it to a particular, selective group of the public, and in that case, because of the fact that the present rate fabric does not yield the return, there would be no means of making that up under present conditions.

Mr. HUDDLESTON. The present condition is hoped to be temporary. It is expected that when we return to normal conditions the rates which have been fixed by the Interstate Commerce Commission will yield to the railroads the 6 per cent, and some among us hope they may be even reduced and still produce a reasonable return to the carriers. When that condition comes, the railroads would be entitled to get their reasonable return out of somebody, and if they do not get it out of the traveling salesmen for the service they render them, they have got to get it out of somebody else. That is obvious.

Mr. BEVINGTON. But in the meantime the railroads would lose this money. The patient is sick and is getting more so.

Mr. HUDDLESTON. The general public is demanding a reduction in rates now, and, of course, the matter is under consideration by the commission, and if that reduction is granted to any class of traffic, it is quite obvious it can not also be granted somewhere else. You can not give two reductions to cover the same item. Whatever reduction is given to traveling salesmen, if it is an unjust reduction as compared with the cost of service they receive, must necessarily be given at the expense of the general public.

Mr. BEVINGTON. Of course, the general public would profit to some extent, as we have estimated, by a reduction in connection with an interchangeable mileage ticket.

Mr. HUDDLESTON. But only to the extent the general public bought the mileage tickets themselves and became thereby of the preferred class.

Mr. BEVINGTON. Yes; and as we see it, there is no way of making that up at present. We would simply be out the amount of the reduction, whatever it may be, with no possible opportunity to recoup ourselves.

Mr. MAPES. Can you tell us what proportion of the equipment and property and men of the railroads is used in the freight business and what proportion in the passenger business?

Mr. BEVINGTON. No; I can not.

It is the desire of the carriers to do everything possible, not only to stimulate travel, but to aid in the restoration of business generally, but it is submitted that, upon the showing made, it is at least questionable whether these objects could be attained by taking from them any important proportion of their present revenue. If this were done, it would not be promotive of the interests of the carriers nor of any other interests dependent upon adequate transportation service.

That is all I have to submit, Mr. Chairman.

EXHIBIT A.
2,000-MILE BOOK.

From—	To—	Normal fares.	Miles.	Fares at 2.5 cents per mile.	Mileage ticket at \$50, or 2.5 cents per mile.	Gross saving by use of mileage ticket.	Surplus mileage out of 2,000-mile books	Net saving if surplus mileage not used for other travel.
Chicago.....	San Francisco:							
	One-way....	\$80.14	2,261	\$56.53	1 book, \$50 plus \$9.40 (261 miles, at 3.6 cents per mile); total, \$59.40.	\$23.61	.....	\$20.74
Chicago.....	All-year tourist.	143.78	4,522	113.05	2 books, \$100 plus \$18.90 (522 miles, at 3.6 cents per mile); total, \$118.90.	20.73	.....	24.96
	Seattle:							
Chicago.....	One-way....	77.43	2,144	53.60	1 book, \$50 plus \$8.18 (144 miles, at 3.6 cents per mile); total, \$58.18.	22.82	.....	22.26
	All-year tourist.	137.78	4,288	107.20	2 books, \$100 plus \$10.28 (288 miles, at 3.6 cents per mile); total, \$110.28.	26.56	.....	27.42
St. Louis.....	Los Angeles:							
	One-way....	73.64	2,045	51.13	1 book, \$50 plus \$1.62 (45 miles, at 2.5 cents per mile); total, \$51.62.	22.61	.....	21.92
St. Louis.....	All-year tourist.	132.63	4,090	102.25	2 books, \$100 plus \$2.24 (490 miles, at 2.5 cents per mile); total, \$102.24.	36.34	.....	26.96
	Denver:							
New York.....	One-way....	98.26	1,324	69.25	1 book, \$50,	21.92	10	11.92
	Round-trip.	196.52	2,648	98.75	2 books, \$100,	43.84	100	30.84

2,500-MILE BOOK.

From—	To—	Normal fares.	Miles.	Fares at 2.5 cents per mile.	Mileage ticket at \$50, or 2.5 cents per mile.	Gross saving by use of mileage ticket.	Surplus mileage out of 2,500-mile books	Net saving if surplus mileage not used for other travel.
New York.....	Los Angeles:							
	One-way....	111.71	2,967	87.82	3 books, \$75, plus \$2.46 (75 miles, at 2.5 cents per mile); total, \$77.46.	86.27	.....	86.27
New York.....	All-year tourist.	211.41	4,334	154.86	2 books, \$100, plus \$6.46 (334 miles, at 2.5 cents per mile); total, \$106.46.	46.26	.....	46.26
	Seattle:							
New York.....	One-way....	111.71	2,962	87.81	3 books, \$75, plus \$2.46 (75 miles, at 2.5 cents per mile); total, \$77.46.	86.26	.....	86.26
	All-year tourist.	211.41	4,334	154.86	2 books, \$100, plus \$6.46 (334 miles, at 2.5 cents per mile); total, \$106.46.	46.25	.....	46.25

EXHIBIT A—Continued.

5,000-MILE BOOK.

From—	To—	Normal fares.	Miles.	Fares at 2.5 cents per mile.	Mileage ticket at \$125, or 2.5 cents per mile.	Gross saving by use of mileage ticket.	Surplus mileage out of 5,000-mile books.	Net saving if surplus mileage not used for other travel.
Chicago.....	San Francisco, all-year tourist	\$143.78	4,522	\$113.05	1 book, \$125.....	\$30.73	478	\$18.78
Do.....	Seattle, all-year tourist.	137.78	4,288	107.20	.....do.....	30.58	712	12.78
New York.....	Los Angeles, all-year tourist.	201.06	6,194	154.85	1 book, \$125, plus \$42.98 (1,194 miles, at 3.6 cents per mile); total, \$167.98.	46.21	.....	33.08
Do.....	Seattle, all-year tourist.	196.61	6,104	152.60	1 book, \$125, plus \$39.74 (1,104 miles, at 3.6 cents per mile); total, \$164.74.	44.01	.....	31.87

EXHIBIT B.

Statement showing the extent to which mileage tickets were used between important commercial centers in southeastern territory for the fiscal year ended June 30, 1917, when the basic rate was 2½ cents per mile and the mileage-ticket rate was 2 cents per mile.

From—	To—	Per cent handled on mileage books..
Wilmington, N. C.....	Washington, D. C.....	64
Charleston, S. C.....	do.....	75
Jacksonville, Fla.....	do.....	85
Do.....	Atlanta, Ga.....	61
Do.....	Cincinnati, Ohio.....	85
Do.....	New Orleans, La.....	48
Tampa, Fla.....	Cincinnati, Ohio.....	85
Do.....	Washington, D. C.....	98
Do.....	New Orleans, La.....	80
Washington, D. C.....	Louisville, Ky.....	48
Do.....	New Orleans, La.....	93
Do.....	Pensacola, Fla.....	88
Jacksonville, Fla.....	Montgomery, Ala.....	90
Richmond, Va.....	Memphis, Tenn.....	83
Columbia, S. C.....	New Orleans, La.....	85
New Orleans, La.....	Cincinnati, Ohio.....	68
Pensacola, Fla.....	Washington, D. C.....	95
Mobile, Ala.....	do.....	98
Cincinnati, Ohio.....	New Orleans, La.....	80
Do.....	Jacksonville, Fla.....	85
New Orleans, La.....	do.....	60
Do.....	Richmond, Va.....	99
Do.....	Louisville, Ky.....	75
Do.....	Cincinnati, Ohio.....	79
Louisville, Ky.....	Memphis, Tenn.....	68
St. Louis, Mo.....	do.....	47
Do.....	New Orleans, La.....	46
Do.....	Birmingham, Ala.....	65
Do.....	Jacksonville, Fla.....	86
Memphis, Tenn.....	Vicksburg, Miss.....	50
New Orleans, La.....	Memphis, Tenn.....	61
Raleigh, N. C.....	Washington, D. C.....	53
Do.....	Cincinnati, Ohio.....	72
Do.....	New Orleans, La.....	40
Savannah, Ga.....	Washington, D. C.....	71
Between:		
Washington, D. C., and Atlanta, Ga. (both directions).....		77
Washington, D. C., and Memphis, Tenn. (both directions).....		93
Richmond, Va., and Birmingham, Ala. (both directions).....		60
Columbia, S. C., and St. Louis, Mo. (both directions).....		47

STATEMENT OF MR. W. L. PRATT, SECRETARY NEW ENGLAND PASSENGER ASSOCIATION, BOSTON, MASS.

MR. PRATT. Mr. Chairman and gentlemen, what the preceding witness has stated in the way of information applies equally well to New England, but there are certain exceptional conditions there which, at request of some of the railway executives of the lines in that territory, we have been asked to submit as additional information which perhaps the committee might like to have in regard, first, to what per cent of revenues come from passenger and what from freight; second, a few figures as to the operations of the New England roads for the last year; and, third, some figures that we have in regard to what proportion of the traffic moved on mileage tickets when they were effective, and some estimate or an attempted estimate as to what might happen in the future if they were put in effect. This is given simply as a matter of information.

On the first, to show the relatively high proportion of passenger revenue to freight revenue in New England, passenger revenues to freight revenues for the Class I roads in New England is 37.27 per cent as compared with a percentage for the entire United States of 22.75 per cent. If we take some of the larger carriers, like the New York, New Haven & Hartford Railroad, we find that their revenues from passenger service produces 48.78 per cent.

Mr. MAPES. Are those figures gross revenues?

MR. PRATT. Yes, sir; they are gross revenues from passenger operation or freight operation and not including mail or express.

Mr. MAPES. Gross receipts?

MR. PRATT. Yes, sir; from passenger or freight.

The Boston & Maine, 33.16 per cent from passenger revenues.

Boston & Albany, 39.80 per cent.

Maine Central, 25.59 per cent.

Burland, 32.48 per cent.

Bangor & Aroostook, 13.50 per cent.

That is simply to show the high percentage of passenger to freight.

Mr. MAPES. Can you answer the question which I asked the preceding witness?

MR. PRATT. What was it, please?

Mr. MAPES. What proportion of the equipment and property and employees of the roads is used in the transportation of passengers and what proportion in the transportation of freight?

MR. PRATT. No, sir; I can not.

Mr. HUDDLESTON. Mr. Pratt, can you tell us how those figures compare with the carriers over the country at large?

MR. PRATT. I stated that 22.75 per cent was the percentage on all United States carriers from passengers: in other words, 22.75 per cent for the whole United States, as compared with 37.27 per cent for New England.

Mr. SANDERS. That is for the Class I roads?

MR. PRATT. Yes, sir; those are the only ones for which I speak.

Now, turning to the second proposition, the report of operations for the Class I roads in New England for the year 1921 shows that there are five roads who show a net operating revenue income and five roads that show a deficit.

Mr. HUDDLESTON. Will you give us the names of the roads, please?

MR. PRATT. The Atlantic & St. Lawrence, which is the Grand Trunk Road in New England—would you like the figures?

Mr. HUDDLESTON. Yes.

MR. PRATT. This is operating railway income.

Mr. SANDERS. Net operating railway income?

MR. PRATT. Yes, sir.

The Atlantic & St. Lawrence shows a deficit of \$1,344,364.

The Bangor & Aroostook shows an income of \$1,215,764.

Mr. JONES. Is that the road that charges more than 3.6 cents per mile?

MR. PRATT. Yes, sir. This is passenger and freight both.

Mr. HOCH. What period does that cover?

MR. PRATT. The year 1921.

Mr. SANDERS. The calendar year?

MR. PRATT. Yes, sir.

The Boston & Maine, a deficit of \$1,401,770.

The Canadian Pacific Lines in Maine, a deficit of \$136,889.

The Central New England shows a net income of \$1,297,332.

The Central Vermont, a deficit of \$665,160.

The Maine Central, a deficit of \$466,962.

The New York, New Haven & Hartford, an income of \$740,084.
The New York Connecting Railroad shows an income of \$1,275,009.

The Rutland Railroad, an income of \$450,911.

Now, that is simply from operating income; but when you apply the fixed charges and interest, we find another story. The only roads in New England who show that they have anything over, after they have paid their fixed charges, are the Bangor & Aroostook, who have \$229,120, and the Central New England, \$463,759. The total deficit for all these New England roads is \$31,893,828.

Mr. HUDDLESTON. May I ask, Mr. Pratt, how the income during the present year compares with those figures?

Mr. PRATT. This is for 1921. You mean for the months that have commenced in 1922?

Mr. HUDDLESTON. Yes.

Mr. PRATT. Very slightly better.

Mr. BURROUGHS. Taking all the New England roads together, Mr. Pratt, can you state whether or not they do show a net railway operating income?

Mr. PRATT. Yes, sir. This is the net railway operating income, \$963,905.

Mr. BURROUGHS. Less than \$1,000,000.

Mr. PRATT. Yes, sir; and the deficit, as I stated before, is roughly almost \$32,000,000.

Mr. BURROUGHS. What would you say is the fair value of those roads?

Mr. PRATT. I could not say.

Mr. BURROUGHS. You have not those figures?

Mr. PRATT. No; the valuation has been computed by the Interstate Commerce Commission.

Mr. BURROUGHS. But you do not have those figures with you?

Mr. PRATT. No, sir; I have not.

Mr. JONES. Do you have any information as to whether or not when the road showed a net gain that that was done at a sacrifice of maintenance and upkeep of the road?

Mr. PRATT. No, sir; I do not know.

Mr. MERRITT. You do not know?

Mr. PRATT. I have not any figures on that; no, sir.

Mr. MERRITT. Do any of the roads in New England pay a dividend?

Mr. PRATT. I do not think so; no, sir.

Mr. HOCH. How did the gross income compare with previous years?

Mr. PRATT. I do not know what previous year you refer to. I have no figures and I could not cite anything that would be positive.

Mr. HOCH. What I am trying to get at is the significance of those figures as to whether they indicate, in the main, a decrease in the gross income or whether the main thing that they show is an increase in the gross operating expense. You have simply given us the net.

Mr. PRATT. Yes, sir.

Mr. HOCH. And I would be interested in some comparison as to the volume of business handled in 1921 as compared with any other years for which such a comparison would be significant.

Mr. PRATT. I have no figures, but I think it is safe to say that the net operating revenues have declined.

Mr. HOCH. The net?

Mr. PRATT. Yes; the net incomes have declined.

Mr. HOCH. Have the gross revenues declined?

Mr. PRATT. Well, I was referring to net operating income.

Mr. HOCH. I am talking about the revenues.

Mr. PRATT. That is what I mean.

Mr. HOCH. The income alone without comparison with the expense of operation?

Mr. PRATT. That is to say, the expense of operation has increased very greatly in New England, and the increase in revenues has not comparatively increased.

Mr. HOCH. That is the comparison I am trying to get. I want to see what the increase in the operating expense is as compared with the increase in the operating revenue.

Mr. PRATT. I have no figures and could only make a general statement.

Mr. SANDERS. I might suggest that the Interstate Commerce Commission has those figures definitely for the Class I roads.

Mr. HORN: I have a short time now, but it is interesting these figures. Mr. PRATT: I am sorry, Mr. HORN, but I do not believe it would be wise for these figures to interest a committee who are dealing in a low rate. I do not think the figures tell the full story, because they were a great number, so, the fact is never sufficient to indicate what the real trouble has been. There is the difference between distance of passenger to the place of destination and the starting point. And the two or three figures of one day, we find, is not enough to represent the total picture.

Mr. PRATT: Yes, sir.

Mr. HORN: Therefore, I guess we'd like to have something else, more definite, more or covering others, all points of view, to the best of my knowledge.

Mr. MERRITT: In connection with this, will we be given statistics about passenger revenue? That is, since low rates usually attract all, is there a figure which includes statistics of a loss of passenger ship rate to the passenger's benefit at a particular time of a year, say, etc.?

Mr. PRATT: These figures were submitted, just to show what the actual results were.

Mr. MERRITT: I understand that.

Mr. PRATT: It is true that one would say if we take statistics away from passenger revenue, naturally the shipping companies don't care.

Then we have other figures as to what per cent of passenger revenue comes in mileage tickets when they were in effect in New England.

Now these figures which I will now show the value of mileage tickets, is over passenger revenue, etc. They do not include revenue from interline traffic, nor some of the railroads or their roads. This is true because in New England when the competition was made there was no interconnection. It appears to consist of separate tickets between the two, and that explains there was a loss, yet we do not have an interconnection of these lines everywhere as the law, etc., says.

In the Boston & Albany Railroad for the year ending May 31, 1918, their per cent from mileage tickets was 31.5 per cent of their total passenger revenue.

The Boston & Albany 31.5 per cent.

The Boston & Maine 24.5 per cent.

The Central Vermont 24.5 per cent.

The Maine Central 25.5 per cent.

The New Haven New Haven & Hartford 5.5 per cent.

The Rutland 5.5 per cent.

The Northern 5.5 per cent for the year ending May 31, 1918.

Mr. PRATT: Now, sir. That was when the mileage tickets were taken off. Mr. MERRITT: That was during 3 years, during 1915, 1916, 1917, of course. In December, 1918, the mileage tickets were put back on again, the latter part of 1918. These figures are for the year ending May 31, 1918. This is just to show what percentage of the traffic showed them on mileage tickets when they were still discontinued.

Mr. MERRITT: And what were the mileage tickets sold?

Mr. PRATT: It is the policy of the roads that were 1-mile-mile tickets at 2 cents per mile and a five-mile ticket at 12 cents per mile.

Mr. MERRITT: And what were the local passenger rates?

Mr. PRATT: They varied from 2 cents generally in southern New England, and in some cases the fares were as low as 1½ cents per mile, local fares and economy 2 cents per mile and on the Bangor & Aroostook something over 4 cents.

Mr. MERRITT: Do you think that is a fair comparison, when the mileage books sell at 2 cents per mile and some roads had a passenger rate of 4 cents?

Mr. PRATT: The Bangor & Aroostook Railroad mileage tickets were not sold at 2 cents or 2½ cents. Their rate was higher. I do not recall just what it was, but it was definitely higher, something like 2½ cents or between that and 3 cents per mile.

The CHIEFMAN: And they were not interchangeable?

Mr. PRATT: No, sir. There was a certain amount of interchangeability.

The CHIEFMAN: Not of the Bangor & Aroostook?

Mr. PRATT: No, sir.

Mr. MERRITT: And this does not include communation tickets?

Mr. PRATT: No, sir.

MR. LEA. What is the explanation of the wide difference in the percentage of income from these mileage tickets, one road having over 56 per cent and another 9 per cent?

MR. PRATT. That is explainable by the fact that on the roads where the percentage is great their local rate was 3 cents per mile and their mileage ticket was sold at 2 or 2½ cents, while on the New Haven Road. I do not think they had anything higher than 2½ cents per mile and in some cases I think it ran lower than that, but the spread was greater between the mileage-ticket rate and the local-ticket rate, where the percentages are high.

MR. LEA. So the conclusion from that would be that the lower rate was attractive?

MR. PRATT. Absolutely.

MR. MAPES. When did the order of the director general discontinuing these mileage tickets go into effect?

MR. PRATT. June 10, 1918.

MR. MAPES. Up until that time were they sold at the same price they had been sold prior to Federal control?

MR. PRATT. Yes, sir.

MR. MAPES. When did the order go into effect increasing the rate?

MR. PRATT. June 10, 1918.

MR. MAPES. At the same time the mileage books were discontinued?

MR. PRATT. Yes, sir.

MR. HUDDLESTON. Mr. Pratt, do you agree with the argument that there is no advantage or benefit to the carriers from issuing mileage tickets?

MR. PRATT. You mean advantage?

MR. HUDDLESTON. That they did not save anything. In other words, do you agree with the argument that the carrier can not afford to sell a mileage ticket for less than the regular fare?

MR. PRATT. The result, of course, speaks for itself in these high percentages as to what the mileage traffic has been, and I will attempt to show what the loss would be if they were put in effect, and then compare with the condition of the roads, as I previously stated.

MR. HUDDLESTON. How do you account for the voluntary use of mileage tickets by the carriers prior to the period of Federal control?

MR. PRATT. It was the result of conditions. Sometimes the carriers were forced to put them on by State legislation.

MR. HUDDLESTON. That does not apply to the New England roads, does it?

MR. PRATT. Yes.

MR. HUDDLESTON. Were they forced to put on these group mileage tickets?

MR. PRATT. Yes; by a Massachusetts law.

MR. HUDDLESTON. Not as applicable to interstate commerce, however?

MR. PRATT. No, sir.

MR. HUDDLESTON. Then, why did they put them on as applicable to interstate commerce?

MR. PRATT. I can not tell you just what States put in the laws requiring mileage tickets, but I am certain of Massachusetts, and, I believe, New Hampshire.

MR. HUDDLESTON. They required their sale at a specific rate?

MR. PRATT. I think they did.

MR. HUDDLESTON. What was the rate required by law?

MR. PRATT. Two cents and 2½ cents; at least, in Massachusetts there was a 500-mile book that was put in by order of the legislature at 2½ cents per mile.

MR. HUDDLESTON. I am curious to know why the carriers put mileage tickets in in those cases in which they were not compelled by law to put them in.

MR. PRATT. The small size of the States was one reason. A road did not go very far before it came to a State line. There was a law in a State that required the ticket to be put in, and then they ran into another State with a similar law, and before they got through it was very hard to differentiate, where the roads ran through so many States, to have one rate on one portion of their line and another rate on another portion.

MR. HUDDLESTON. That hardship would fall on the man who was trying to get the benefit of the mileage ticket sold under legal force, it seems to me, more than it would on the carrier. In other words, due to the facts which you state, had the carriers chosen not to put them in for interstate commerce, these books would have had very small value to their holders.

MR. PRATT. It was largely a matter of public policy at the time when those things started. The condition of the carriers was much better. The operating expenses were much less.

Mr. HUMBLESTON. By public policy do you mean a policy addressing itself to public sentiment, or what?

Mr. PRATT. No; if the law was put in in one State, then it was pretty fair to assume that the next adjoining State would make the same kind of a requirement, and I think the carriers felt that they might as well put the ticket in. Their condition was better at that time and they could stand it. Business conditions were better everywhere in the country.

Mr. HUMBLESTON. But you adhere to the view that there was no economy worked to the carriers through the issuance of mileage tickets?

Mr. PRATT. Economy?

Mr. HUMBLESTON. Yes; a saving advantage or benefit above what would have existed at the regular fare.

The CHAIRMAN. Mr. Humbleston is your point to find out if the net benefits from passenger receipts were improved by virtue of mileage books, or otherwise?

Mr. HUMBLESTON. The position seems to be taken on behalf of the carriers that there is no advantage to them in selling a mileage ticket and that they can not afford to sell it for a rate less than a regular ticket. I am very much interested to know why they said mileage tickets voluntarily prior to Federal control.

The CHAIRMAN. Will the witness answer that question?

Mr. HUMBLESTON. Of course statements have already been made on the subject, but I am desirous to know whether Mr. Pratt agreed with those statements or not. Of course, it is largely a matter of opinion.

Mr. PRATT. As I stated before, it was largely a question of growth, when times were more prosperous; that is, the mileage tickets were put in a long time ago, sometimes by requirement when the condition of the roads was better. That does not apply now.

Mr. HUMBLESTON. In other words, I have this point in view, that business men such as operate the railroads are not likely to do things that are against their best interests?

Mr. PRATT. No, sir.

Mr. HUMBLESTON. Therefore, it follows that wherever they put in these mileage books without being required by law to do so, they conceived it to be in their interest to do so, and that would imply that there was some saving, economy, or advantage somewhere along the line of putting in those books, although that idea is not agreed to by other witnesses?

Mr. PRATT. At that time; not at this time; it is different. As I said, it was not altogether the proposition of the carriers, but it was the requirements that they had to meet.

Mr. HAWES. Mr. Pratt, we had a period in our country when State legislatures were making rates, and I assume that in the New England territory you went through the same experience we did in the West. That is to say a State would make a rate of 2.5 cents a mile for the mileage book. The fact that one State did that indicated that an adjoining State would possibly follow suit and do the same thing. For that reason, as I understand, the road knowing that the State comic take legislative action, commenced to issue these mileage books. Now, was that the primary cause?

Mr. PRATT. It was one of the compelling causes. There was also this. At the time of prosperity the States, many of them, as you say, legislated 1 cent per mile bills, and perhaps for fear of further legislation of that kind the carriers were more willing to put in a mileage ticket to save the total reduction on everything they might carry.

Mr. HAWES. There was the additional reason of convenience for long distance travel where one State had a 2-cents-a-mile rate and the adjoining State did not have such a rate and the next State did have that rate?

Mr. PRATT. Yes, sir.

Mr. HAWES. Was that one of the primary causes for the issuance of the mileage books?

Mr. PRATT. It was, because it is very hard, particularly in New England, to police any ticket that is good only within a State. From Boston to Portland a carrier runs through three States. You can imagine the trouble and worry to the passenger and carrier to make a different collection within each 40 miles between Boston and Portland where they go through three States.

The CHAIRMAN. As you probably remember, the mileage system of New England, if a traveler started from New York for Boston, he could go on a

mileage book on the New Haven road the whole distance, but he could not use the New Haven ticket from Springfield to Boston over the Albany which connects at Springfield for New York with the New Haven, and one of the reasons undoubtedly why the Boston & Albany put in mileage would be to offer an attraction to the traveler to take the New Haven, whereas the Springfield line to Boston, not being obliged to take the other, would net a low rate?

Mr. PRATT. Quite right.

The average of mileage receipts to local receipts for all of these New England roads for the period up to May 31, 1918, was 14.8 per cent. That relates to the local travel only. Now, then, the interchangeable mileage would be usable in comparison with the local interline traffic, which we did not have before, because the mileage tickets were restricted locally to roads with certain exceptions. That would mean that if we applied this 14.8 per cent average for the year ending May 31, 1918, to the passenger revenues for the year 1921, the total of which for these New England roads, less commutation traffic, was \$80,377,693, there would be an amount of \$11,654,765 of traffic affected. If the mileage tickets were sold at a 10 per cent reduction, which would give a rate of 3.24 cents per mile, the loss to all of these carriers would be \$1,165,476, a 16½ per cent reduction, which would give a rate of 3 cents per mile and a loss of \$1,942,460, a 25 per cent reduction, which gives 2.88 cents per mile, and a loss of \$2,330,953, and a 30.5 per cent reduction would give a rate of 2.5 cents per mile and a loss of \$3,554,703; but this 14.8 percentage is altogether too low, because that is at the relative value, as I said before, of the mileage revenue to local revenue only, and we have got the interline proposition to meet. That would mean if instead of 14.8 per cent there were 25 per cent of traffic affected, as was stated by Chairman Bevington, and a 20 per cent reduction in the price of the ticket there would be a loss of \$4,018,884, and if 45 per cent mileage travel it would mean at a 30.5 per cent reduction in price, a loss of \$10,318,381.

Mr. HOCH. Those estimates are based on the theory that there would be no increase in the volume of traffic?

Mr. PRATT. Yes, sir.

The Bangor & Aroostook Railroad was referred to yesterday. For the year ending May 31, 1918, the percentage of mileage traffic handled by them was 38.05 per cent of the total passenger revenues. If we apply that to their last year's passenger revenues there would be \$363,879 of traffic affected. They would lose on the basis of a 10 per cent reduction, \$36,387; on a 16½ per cent reduction, \$60,646; on a 20 per cent reduction, \$72,756; and on a 30.5 per cent reduction, \$110,983, and still greater if an interchangeable mileage ticket rate were to be applied based from 3.6 cents per mile where their local rate is now higher than 3.6 cents.

The Boston & Maine Railroad for the year ending 1917 carried 18.84 per cent mileage traffic as against local passenger revenues. Applying that 18.84 per cent against revenues for last year gives you an amount of \$3,625,600 to be affected, and a 10 per cent reduction would be a loss of \$362,560; a 16½ per cent reduction, \$604,266; a 20 per cent reduction, \$725,120; a 30.5 per cent reduction, \$1,208,533. If 25 per cent of the traffic or \$4,811,579 were moved on mileage tickets, in accordance with the figures presented yesterday, at a reduction, \$1,208,533. If 25 per cent of the traffic or \$4,811,579 were moved there would be affected \$8,660,843, and a reduction of 30.5 per cent would mean a loss to the Boston & Maine of \$2,641,557.

Perhaps I might call attention to the New England rate case before the Interstate Commerce Commission, from which this a quotation:

"There is probably no part of the country where the sale of mileage books on a substantially lower basis per mile than regular one-way fares has resulted in such flagrant abuses, such unjust discriminations, and such impairment of railroad revenues as in New England."

"The fundamental evil in the sale of mileage books at least, in least in New England, is that they accord preferential fares to those who use them."

Mr. MAPES. What is the name of that case?

Mr. PRATT. The New England Rate case (49 I. C. C. 421, 443), April, 1918.

When the New England carriers were asking the commission if they might not raise their local passenger rates, the mileage book was recited as interfering in the manner described.

Mr. HOCH. You have given figures which show that the New England roads are operating at a loss. Do you think that the rates in New England should be increased?

Mr. PRATT. The general conditions are, perhaps, but the hauls are much shorter in New England and the operating expense is more. Therefore, our chance to get a profit is less than in other sections.

The CHAIRMAN. Is there as thickly a populated traveling public in any other part of the United States as there is in New England?

Mr. PRATT. No, sir.

The CHAIRMAN. Which carries with it crossings, stations, upkeep, and frequent trains?

Mr. PRATT. Taxes on terminals.

The CHAIRMAN. Taxes on more property, because of more stations?

Mr. PRATT. Yes, sir.

The CHAIRMAN. And sidings and freight houses?

Mr. PRATT. Yes, sir.

The CHAIRMAN. Everything you can think of, and operating, it seems to me, is more expensive in New England than in any other part of the country, whether it be passenger or freight?

Mr. PRATT. It is so, beyond a doubt.

The CHAIRMAN. The only offset to Mr. Hoch's inquiry, it seems to me, is that in New England they carry a very large number of people on their trains?

Mr. PRATT. It is slightly higher in New England per car, if that is what you mean.

The CHAIRMAN. Yes, sir; that is what I mean.

Mr. PRATT. The average number of revenue passengers per car for 1921 in New England was 24.74, while in the United States it was 16.42, but that includes commutation traffic in New England.

Mr. MERRITT. I live on the main line of the New Haven road, not far from New York, in Connecticut, and many people about where I live protested against an increase of fares, and made the argument in local chambers of commerce or boards of trade that the road would lose traffic by putting the fare at 3.5 cents per mile.

Mr. PRATT. 3.6 cents is the local rate.

Mr. MERRITT. The roads always like to put the rates down, when they can afford to. As a matter of fact, I should say that the change from 2 cents gradually up to 3.6 cents has not affected the number of people traveling. Do you know whether that is true of the New Haven?

Mr. PRATT. The travel is influenced by business conditions, and it is very hard to tell. You will find that when the fares went up on August 26, 1920, 20 per cent, for a time there showed an increase in revenue to the carriers, but business conditions changed, and now there show a decrease, falling off along with business depression.

Mr. BURROUGHS. Mr. Pratt, you say that when those rates were increased on August 26, 1920, to 3.6 cents a mile, as I understood you, the immediate effect as reflected in your returns was an increase in the passenger revenue?

Mr. PRATT. Yes, sir.

Mr. BURROUGHS. Was it an increase in proportion to the increase in the rates?

Mr. PRATT. No; it was not.

Mr. BURROUGHS. How was it with respect to the increase in the rates?

Mr. PRATT. I can not give you the figures. It has never been figured that I know of, but I do know this, that for the year 1921, with the increase of 20 per cent proposed in passenger revenues—the carriers in New England did not get that 20 per cent; failed to get it by some 13 or 14 per cent; I have not the figures with me. That is my recollection.

Mr. BURROUGHS. Are you able to state how it is for the first two months of this year? Are the passenger revenues of the New England roads increasing or are they decreasing?

Mr. PRATT. I have no figures.

Mr. BURROUGHS. How was it in the last six months of last year? Were they generally increasing or were they generally decreasing?

Mr. PRATT. I think they showed a decrease the last six months. I have not the figures with me.

Mr. JONES. Was there ever a time in New England when the per annum gross income was equivalent to the cost of operating passenger trains? In other words, did the passenger service ever pay by itself?

Mr. PRATT. I never saw any figures. I have heard it said that it did not.

Mr. BEVINGTON. A moment ago when the committeeman quoted me as saying, in reply to the inquiry as to whether the basic passenger fares should be increased or decreased in order to bring about the return contemplated by the transportation act, I had said that I would neither increase nor decrease the present basic rate, but I qualified that. I said that I would neither increase nor decrease the present basic rate under present conditions, inasmuch as the present basic rate has not had a fair trial because of the fact that there has been a continued general business depression ever since the present basic rate was put into effect in August, 1920.

Mr. HOCH. Did you not state that, in your opinion, the present rate under present conditions was yielding the largest possible net return to the carriers?

Mr. BEVINGTON. Well, I qualified it the other way about, as I recall it—

Mr. HOCH. It amounts to the same thing.

Mr. BEVINGTON (continuing). That I would not increase or decrease the present basic passenger rate until it had a fair trial under normal conditions, and that it had not had a fair trial under such conditions.

Mr. HOCH. Well, I asked you whether, in your judgment, the rate was not at the best possible level to secure, under present conditions, the largest net return, and my recollection is that you stated positively that you thought it was, and that if you had the sole power of fixing the rate from the standpoint of the carriers alone, as a simple business proposition, you would neither increase nor decrease the basic passenger rate under present conditions; is not that correct?

Mr. BEVINGTON. Yes: because I argued it out; at least, I did not argue; I presented the facts to show that a reduction in the basic rate per mile would not stimulate travel sufficiently to give us the same return that we enjoyed prior to the reduction, and that it would be merely speculative to undertake to reduce the present basic rate under present conditions, and that it should be given a fair trial under normal conditions. That is what I intended to testify, if I did not.

Mr. HOCH. Well, what is your judgment now? After thinking this matter over, would you now increase the basic rates under present conditions from the standpoint of revenue?

Mr. BEVINGTON. Increase it?

Mr. HOCH. Yes.

Mr. BEVINGTON. No, sir.

Mr. HOCH. You think that if you raised the basic rate, which is now an average of 3.6 cents per mile, the railroads would be worse off from a revenue standpoint than they are with the present rate?

Mr. BEVINGTON. I think it might tend to stifle traffic and restrict it. Of course, if you got the rate up to 10 cents a mile, it certainly would restrict the travel and curtail it to a great extent.

Mr. HOCH. The preceding witness testified that the increase in the rate in New England apparently had not decreased the volume of traffic, if I understood him in answer to Mr. Merritt's question.

Mr. BEVINGTON. Well, there is a factor that must always be considered year by year and practically month by month, and that is the general business situation. That is an all-important factor in this matter. When business is good people travel. When they have money they travel, and when business is not good and they are short of cash, they do not travel any more than they buy merchandise when they are short of cash. Everybody in every line of business, as I understand it, is to-day complaining of lack of business, and we are just suffering along with the rest.

Mr. HOCH. Then you think that the Interstate Commerce Commission has given to the carriers the rate which in the opinion of the carriers will yield the largest possible net return to the carriers under present conditions?

Mr. BEVINGTON. Yes, sir; under present conditions.

Mr. HAWES. But, Mr. Bevington, those conditions must take into consideration the present equipment of the roads, their financial ability to increase or change that equipment; so that in figuring on a maximum or a minimum rate and approving it you necessarily must consider the financial stability of the road and its capacity to change its equipment.

Mr. BEVINGTON. Yes, sir; all of those things should be taken into consideration.

Mr. HAWES. It is not merely a matter of the maximum or minimum trade, based upon the condition of the country, but it must include the financial condition of the road, the condition of its passenger trains, the number of passenger

trains which it has, and its ability to improve the passenger equipment. That is a consideration, is it not?

Mr. BEVINGTON. Yes, sir. Of course, all those things come under the head of cost of operation, as a matter of fact.

Mr. HAWES. So that in stating that this rate is one that you would not change at this time you are considering a number of elements other than the one of use by the citizens?

Mr. BEVINGTON. Yes, sir. We try to take into consideration, and, in fact, are compelled to take into consideration, all elements.

Mr. HAWES. And you take into consideration the fact that the roads have for some years been under Government supervision, creating an unusual condition? That is an element that you take into consideration?

Mr. BEVINGTON. Yes, sir; that is one of the elements.

Mr. HAWES. I am trying to find out whether the question of Mr. Hoch and your specific answer related to the maximum and minimum travel dependent upon the general financial condition of the country or its industrial condition, or whether you do take into consideration a variety of other conditions?

Mr. BEVINGTON. Well, of course, the main condition we take into consideration is the volume of travel, the cost of operation, and the revenues.

Mr. HAWES. That is necessarily the main consideration, but is it the sole consideration, are there not a variety of other reasons that cause you to give that rather definite answer?

Mr. BEVINGTON. Well, yes; there are other reasons, of course. We try to take into consideration every element that enters into our business, naturally, in reaching a conclusion upon any of these points, whether it is one of public policy or the rate or what not.

Mr. BURROUGHS. I understand that your view in regard to whether this present rate is the best possible one, from the standpoint of justness and fairness, assumes that you believe that the present depressed condition of business is simply temporary and that pretty soon times are going to be better?

Mr. BEVINGTON. Yes.

Mr. BURROUGHS. That is right, is it not?

Mr. BEVINGTON. Yes.

Mr. BURROUGHS. How would it be, for instance, if you knew, as a matter of fact, that the present depressed condition of business was to continue for the next 10 years? Under those conditions what would you say as to whether the present rate of 3.6 cents a mile is the best possible one from the standpoint of revenue?

Mr. BEVINGTON. If we thought that reducing the rate would stimulate business and would give us greater net returns, we would probably take that under consideration, but as we feel at present, under the present depressed industrial condition of the country, we would merely be surrendering so much revenue if we were to reduce the present basic rate per mile.

Mr. BURROUGHS. So that if you knew the present depressed conditions were to continue for 10 or 15 years in the future, you would probably advocate leaving the rate as it is?

Mr. BEVINGTON. Yes, sir; because based upon our experience, and our facts, and our figures, and our returns, and our records, we know that even a substantial reduction in the basic rate per mile would not stimulate travel sufficiently to give us the revenue we enjoyed prior to the reduction.

Mr. LEA. Mr. Bevington, I have heard the statement made that past experience has shown that a material portion of mileage books issued are either lost or at any rate are never used, and from that statement it is argued that the railroads would not suffer a loss by a material reduction in case mileage tickets were placed in use. Have you any statistics to show whether or not that is true?

Mr. BEVINGTON. Due to the gain resulting from the loss of tickets?

Mr. LEA. Yes.

Mr. BEVINGTON. That is negligible as compared with the total.

Mr. LEA. Are there any statistics to establish that fact?

Mr. BEVINGTON. I have no figures on it and could not give you the percentage, but with the millions of passengers we carry, passengers occasionally lose their tickets, all sorts of tickets, but we never take that into consideration in determining what a rate shall be or in recommending what a rate shall be, because the value of the lost tickets as compared with the total revenue is negligible.

The CHAIRMAN. Mr. Thom, who will be the next witness?

Mr. THOM. We have not any more, Mr. Chairman.

WILLIAM BURKE

The following statement has been submitted by Mr. William Burke, Vice Chairman of the National Committee to Stop the War in Vietnam.

STATEMENT OF MR. WILLIAM BURKE, VICE CHAIRMAN OF THE
NATIONAL COMMITTEE TO STOP THE WAR IN VIETNAM

No American has greater pleasure in participating in our own movement than I do in supporting the National Committee to Stop the War in Vietnam. This is because we are all too familiar with the evils of the war machine.

The war machine has been to us all an abysmal disaster.

No American has suffered more from the war machine than I have, and I am not the only one. The effects of the war machine are not limited to the military personnel, but also to the families of the military personnel. The war machine is responsible for the deaths of thousands of Americans and their families, and it is responsible for the deaths of thousands of Vietnamese.

The war machine is responsible for the deaths of thousands of Americans, and it is responsible for the deaths of thousands of Vietnamese. The war machine is responsible for the deaths of thousands of Americans, and it is responsible for the deaths of thousands of Vietnamese.

Today the war machine is responsible for the deaths of thousands of Americans, and it is responsible for the deaths of thousands of Vietnamese. The war machine is responsible for the deaths of thousands of Americans, and it is responsible for the deaths of thousands of Vietnamese.

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I have no figures to present to you, but I firmly believe, and I speak the sentiments of the great majority of the roads that I represent, that it will be unfair to them and it will be unfair to the public to have such a law or rule forced upon them.

For the purpose of saving the time of the committee, I am going to discontinue my testimony at this time, except that I will respond to any questions that may be asked, after which I will introduce our vice president and general counsel, Mr. Cain, who will present two or three amendments to the bill which we feel should be adopted. If they are adopted it will enable the commission to eliminate such roads as it may determine, after investigation, so that such lines may not be required to comply with the proposed requirements; also to make provision for the substitution of a scrip book, which would meet the situation in so far as the differences in the rates charged in different sections of the country are concerned.

We have one member that received 10 cents per mile. That rate is authorized by the commission of its State, and even that rate is not remunerative. But it is all that can be charged, and it certainly would not be fair to require that line to join in selling or to honor a book that has been sold at some low rate, say $2\frac{1}{2}$ per mile, as has been suggested here. Such a reduction might be 25 to 30 per cent in the present average rate, but would be 200 or 300 per cent discount as to that particular line. That, of course, is an extreme case, but there are a great many—I might say hundreds of roads—that under the rules of the State commissions are permitted to make charges in excess of the general average, which must have those higher rates or they can not continue to exist.

Mr. SANDERS. Under your construction of this act, as it now appears, the rate would be uniform throughout the country?

Mr. ROBINSON. That is our construction and, practically, it can not be any other way.

Mr. SANDERS. You think that the specific provisions of the first part of the law could not be overcome by subsequent regulations, under the present language?

Mr. ROBINSON. Under the present language, we think not.

Mr. SANDERS. I agree with you, but I simply wanted to get your own opinion.

Mr. ROBINSON. Explaining my answer, I would say we can not conceive of its being done practicably. For instance, the Baltimore & Ohio will sell a ticket at the rate, say, of $2\frac{1}{2}$ cents per mile, as an illustration. The holder of that ticket presents it to the Uintah Railroad, out in Colorado, the one to which I have referred. That road would be forced to accept it and permit such a passenger to ride over its road. The Uintah Railroad could not call on the Baltimore & Ohio for 10 or $8\frac{1}{2}$ or even $7\frac{1}{2}$ cents per mile to reimburse it for that mileage coupons collected from such book. The Baltimore & Ohio would very probably say, "We only received $2\frac{1}{2}$ cents a mile and we will pay you that amount." The B. & O. could not be expected to pay more. We think that illustrates the impracticability of having the commission make rules that would permit different charges on different roads, but we are going to offer an amendment which we think would meet the various and varying conditions.

Mr. SANDERS. It has been suggested in these hearings that under the language of the bill as written, it might be possible to have a regulation which provided that in addition to giving the mileage ticket, the passenger should pay a cash fare. It was my construction of the act that that could not be done under a regulation.

Mr. ROBINSON. We fully concur in that construction. Our experience with reference to the construction of acts of Congress by the Interstate Commerce Commission is that usually a very strict construction is placed upon them, hence we feel very confident that there is no hope for our lines if the bill should be passed as it is now drawn. We feel that the commission would be compelled to, and that it would hold that all lines must issue and honor the books at one rate. The commission could make some rules and regulations as to how it could issue the book and as to some of the conditions governing same, but the commission could not, as we believe, change the fundamental principles.

Mr. SWEET. Mr. Robinson, do you contend that Senate 848, as it passed the Senate, is unconstitutional?

Mr. ROBINSON. I do not regard it as unconstitutional. But if construed and put into effect as urged by some of the proponents of the bill it probably would become unconstitutional.

Mr. SWEET. Then you differ from Commissioner Esch in that regard?

Mr. ROBINSON. Well, I am giving my opinion and my opinion only.

Mr. SWEET. As I understand it, with that clear in mind, you are going to propose certain amendments which you believe will cover the proposition you are presenting and make the bill workable?

Mr. ROBINSON. I do not know that our amendments will go to the making feature, but will go to the workability of the bill.

Mr. SWEET. That is what I understand. I understand you were discussing the constitutionality and you were trying to ascertain how it would be workable.

Mr. ROBINSON. I may say in explaining at one of the meetings of the authorities that have been called here, in regard to the constitutionality question, that I said, "Well, I don't know if this was the best way to do it, but this is the way we did it." And, you know, our first idea is to see if the amendment can be made to fit the Constitution. I have heard of the right to regulate interstate commerce, and I have heard of the right to regulate intrastate commerce.

Mr. SWEET. Mr. ROBINSON, you are going to present your amendments.

Mr. ROBINSON. I am going to present my amendments, and I am going to present them in the form of a motion to amend the bill.

Mr. SWEET. You are going to present your amendments in the form of a motion to amend the bill?

Mr. ROBINSON. Yes, sir. I am going to present my amendments in the form of a motion to amend the bill.

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Mr. ROBINSON. Yes, sir. I am going to present my amendments in the form of a motion to amend the bill.

Mr. MAPES. Will you tell us what a short-line railroad is?

Mr. ROBINSON. Yes; I have given the Interstate Commerce Commission an official description of that. It means a railroad that is short in mileage or short in revenue.

Mr. SANDERS. Will you not have to enlarge the number you gave when you first referred to the number of short lines?

Mr. MAPES. That is all comprehensive, according to some of the testimony.

Mr. ROBINSON. I want to answer Mr. Sanders's question first, if I may——

Mr. MAPES. I ask the question in all sincerity, I will say.

Mr. ROBINSON. There is no well-defined line of demarcation between roads. It is really a question of the strong and the weak roads. That is a better description of a short line, as we view it, than anything else. There is no plan by which you could distinguish between them by mileage. For example, take the Georgia & Florida, which has approximately 400 miles; it has always had difficulty in earning enough to pay its operating expenses, and we regard it as a short line. On the other hand, take the Richmond, Fredericksburg & Potomac Railroad, which is only a little over 100 miles long. That road is a funnel through which a great volume of traffic flows; it is a very prosperous road, and is not regarded as a short line. There is no real, well-defined rule or measure by which you can say whether a road is one or the other. Ordinarily we regard a weak line consisting of three, four, or five hundred miles as a short line.

Mr. MAPES. You say that you represent some 800 short-line roads?

Mr. ROBINSON. I said there were about 800 roads of that character, and that my association consists of 519 of that 800.

Mr. MAPES. As I understand it, a class 1 railroad is one whose revenues per annum are \$1,000,000 or more.

Mr. ROBINSON. Correct.

Mr. MAPES. That is definite. Now, there is no such well-defined line of demarcation in the definition of a short-line road?

Mr. ROBINSON. The second-class roads are those running down to \$100,000 and the third-class roads with revenue of less than \$100,000. I think that is the classification of the Interstate Commerce Commission.

If you take that as a basis you will find some very short roads that are in class 1, and some roads with much greater mileage that will fall into a lower class, because of lower earnings. Earnings can not be used as a sound basis.

Mr. MAPES. A short-line road then may be class 1 or class 2 or class 3?

Mr. ROBINSON. We have roads in all three classes as members of our association; but it is largely a question of the strong roads on the one side and the weak roads on the other. That is really the distinction.

I want to introduce Mr. Cain, our vice president and general counsel. I may want to say a few words when he shall have finished.

Mr. LEA. Do you favor the scrip book?

Mr. ROBINSON. Yes, sir. If a bill is to be passed, we are going to present an amendment for a scrip book. Mr. Cain will present that.

Mr. LEA. That will be interchangeable and at a reduced rate?

Mr. ROBINSON. If you will let Mr. Cain present it to you he will give you a very complete explanation of it.

STATEMENT OF MR. BEN B. CAIN, VICE PRESIDENT AND GENERAL COUNSEL OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION.

Mr. CAIN. Mr. Chairman and gentlemen of the committee, I am vice president and have a substantial interest in the Gulf, Texas & Western Railroad of Texas, a short line, and am also vice president and general counsel of the American Short Line Railroad Association, which has been mentioned by Mr. Robinson, who has just left the stand.

If you will indulge me for a few moments, I would like in advance of presentation of the amendments which we propose to submit to you some of my views which are of a somewhat general nature in order that you may, perhaps, better understand the proposed amendments.

Our interpretation of Senate bill 848, now under consideration, is that if it becomes a law without modifications it will involve legal questions of a serious nature, and, in addition to that, we believe in practical operation will prove impossible. The objectionable features to this act I want to refer to very

briefly. The law, as we interpret it, without modification, would require the commission to order every carrier subject to the interstate commerce act to jointly issue and put into effect interchangeable mileage tickets good for transportation over every railroad subject to the act in the United States, or, at least, in the continental United States.

There are in the American Short Line Railroad Association a number of small roads, roads with mileage less than 100 miles, that do a very considerable passenger business. Their revenues from passenger transportation are in excess of their revenues from freight. Those lines are lines which serve resorts, winter or summer resorts, and therefore are largely devoted to passenger traffic. There are electric lines that do a general transportation business, and are therefore subject to the Interstate Commerce Commission, or are carriers as defined in the interstate commerce act, who, while they do a substantial amount of freight business, do a greater amount of passenger business. There are some street railways—you would be rather surprised, I imagine, if you were informed fully as to the number of street railways that are subject to the interstate commerce act. In my own State, the city of Texarkana has an imaginary line between the States of Arkansas and Texas, and the street railways that run across that line are interstate carriers physically as well as under definition of the interstate commerce act. In Kansas City the street railways run from Kansas City, Mo., across the line to Kansas City, Kans. At St. Louis the same thing occurs. At Omaha and Council Bluffs the same thing occurs. So in the District of Columbia the street railways run out of the District of Columbia into the State of Maryland and across into the State of Virginia. Therefore there are a number of these lines that are substantially interstate in this proposed law, and I think it will become manifest, if it has not already become manifest, to members of the committee that there ought to be some provision that would take care of that kind of carrier.

Now, if this law is passed without amendment, how will it operate in practice? I am one of those who believe that the commission will do everything it can to carry out the law which Congress, in its wisdom, passes, and I believe whatever safeguards they can throw around these carriers to protect them from abuses of the law will be thrown around them. But, gentlemen of the committee, you must always take into consideration those ordinary and common traits of humanity that we have encountered from the beginning of the world. As I read this law, it is intended and is confined to interstate carriage, but in practice I do not see how it is possible, no matter what kind of order the commission will issue, to properly police those tickets and to protect the carriers against the abuse that must and will occur. That is especially true with regard to these small railroads that run in and out of resorts. For a number of years when I lived in Texas I took my family every summer up into the mountains of Colorado. I bought an excursion ticket to Denver or to whatever point we selected, and I lived in different communities. We were located on side lines out in the mountain resorts. I was amazed to see that families, as well as combinations of individuals, would join together and buy a commutation ticket, which was sold from Denver out into the mountain resorts, and would farm out or use those tickets between themselves, notwithstanding that the man who bought it and in whose name it was issued signed an obligation on his part that he would not transfer it.

It is common knowledge to us all that men will satisfy their conscience in some sort of way in matters of this kind. Suppose the Interstate Commerce Commission says: "You shall not use this ticket; this ticket shall not be used except for interstate transportation." All right, the conductors receive their orders that if they are presented for intrastate transportation they shall not be used. A man gets on the train at some place in Pennsylvania and he starts toward Philadelphia. He does not want to go beyond Philadelphia. That illustration has been used here. He gets on the train with one of these tickets, and the conductor, a diligent conductor, a conductor that is more devoted to duty than the average conductor, says to him: "Did you buy this ticket?" "Yes, sir; I bought that ticket." "Is that your name?" "Yes, sir; that is my name." "Are you going to go out of the State?" "Yes, sir." He probably will not ask him when he is going out of the State. He is not going to ask him if he is on a continuous journey, and if he does the man says: "I am going out of the State," and if he wants to satisfy his conscience, if he has a rigid conscience, when he gets to Philadelphia he goes across the river and back

and he has not told a lie, but the conductors are not going to do that, in my judgment. They never have done it within my observation.

Mr. GRAHAM. I do not want to interrupt your argument, but I just wondered if I understood this right. Suppose the rule was that the mileage would not be taken for any trip except an interstate trip, and if a man presented a ticket for Pittsburgh, even though he might say that he was going outside of the State, and if he asked to have the mileage pulled from the city of Philadelphia the conductor could refuse to do that, unless he was going to some place outside of the State of Pennsylvania?

Mr. CAIN. That would make it practically impossible. I do not think any set of conductors or any conductor or any system of accounting could take care of a situation where a conductor on one railroad would pull enough fare to take a man anywhere in the United States that he wants to go. I do not believe that is practically possible.

Mr. JONES. I think you are wrong about that, Mr. Cain.

Mr. CAIN. All right.

Mr. JONES. I am talking about a mileage book, I am not talking about scrip. The book itself is presented.

Mr. CAIN. Yes, sir.

Mr. JONES. If I read this bill correctly, an order could be issued to the conductor whereby he should not accept a book for any transportation except interstate?

Mr. CAIN. Yes, sir.

Mr. JONES. A passenger gets on at Pittsburgh and says that he is going to Philadelphia.

Mr. CAIN. He does not say that.

Mr. JONES. I do not care what he says. He is going some place. The conductor usually asks him where he is going.

Mr. CAIN. Yes, sir.

Mr. JONES. In my State the first conductor would take the mileage through to the point of destination and give a return check.

Mr. CAIN. Yes, sir.

Mr. JONES. Which he gives to the subsequent conductor at the division point.

Mr. CAIN. Yes, sir. He could do that on a short trip. Could he do that across the United States?

Mr. JONES. No; not across the United States. The law would apply, because that is interstate, but the use of the mileage book from Pittsburgh to Philadelphia—

Mr. CAIN (interposing). That is interstate to anywhere in the United States. Suppose I got on here to-day with a mileage book and I said to the conductor, "I am going to Texas or California"?

Mr. JONES. That is interstate. I can understand how that would apply and how the conductor could not refuse to accept it, but I am speaking now of a passenger who goes from one point in a State to another point in the State, could the conductor, under an order of the company, refuse to accept that book. Your position is that he is compelled to take it under representations made by the passenger that he is going interstate; that he is going to continue through one State into another.

Mr. CAIN. I am saying that because I am assuming that the conductor could not possibly make the accounting, or that it would be practical at all for the proper accounting to be done if the conductor took all the fare to the point of destination on one railroad. I do not think it is practical. I do not think that the commission would put such an order as that into effect.

Mr. JONES. Do you not think it is practical to use the book under the proposed law and have the conductor refuse to take the book from one point in a State to another point in the State?

Mr. CAIN. Surely, but if you propose to police the law in that way you have got to see that the conductor pulls off all of the transportation for wherever the man is going. You can not do it otherwise. I say the commission would hold it impossible. I do not believe the commission would undertake to do such a thing as to impose upon one carrier and its conductor the responsibility of tearing off a ticket that would carry a man anywhere in the United States. It imposes upon all of the carriers the responsibility of an employee of one railroad and requires of the initial conductor an impossible duty.

Mr. JONES. Yes; I appreciate that. Would not they, under the bill, the way it is drawn, make the railroad companies instruct their conductors so that this mileage book could not be used for an intrastate passage?

Mr. John Deere

Mr. Deere: Well, we have a right to know what is the truth. Mr. Tracy: That's where the trouble is, because I am not the person to know what is the reason for a man to be killed or a woman to be killed. I am not the person. The railroad company can say it is because it is in their best interest to make the statement themselves.

Mr. Deere: And I would say that it is a tremendous right of a man who is a citizen of this country to know what is the reason for his death. I am going to say if it is necessary to do it in the public interest, if the fact of a man being killed is to be known, it is a tremendous responsibility.

Mr. Tracy: I think it is up to them to be the spokesman to speak out on it. It would be right for the railroad to speak out on it, but they don't want to do it. I think the railroad company is not willing to do that. I think it is a tremendous responsibility.

Mr. Deere: I think so.

The Deere: The railroad will not do it unless there is some tremendous importance.

Deere: I am continually in touch with the railroad. I think there is something in it.

STATEMENT OF MR. JOHN DEERE, THE PRESIDENT AND GENERAL
MANAGER OF THE DEERE & CO. TRACTOR COMPANY, DAKOTA CITY, NEBRASKA

This statement is made by Mr. John Deere, President of the Deere & Co. Tractor Company, Dakota City, Nebraska, in the presence of:

STATEMENT OF MR. JOHN DEERE, THE PRESIDENT AND GENERAL
MANAGER OF THE DEERE & CO. TRACTOR COMPANY, DAKOTA CITY, NEBRASKA

Mr. Deere: Well, I am the president and general manager of the Deere & Co. Tractor Company, located at Dakota City, Nebraska. We are engaged in the manufacture of tractors and farm implements. We have been in business for many years and have a large number of employees. We are a family-owned company and pride ourselves on the quality of our products. We are a leader in the industry and are constantly looking for ways to improve our products and services. We are a company that values its employees and customers highly.

We are a company that is committed to safety and quality. We believe that safety is the most important thing in our business. We are a company that is dedicated to providing the best products and services to our customers.

We are a company that is committed to innovation and progress. We believe that innovation is the key to success. We are a company that is always looking for ways to improve our products and services. We are a company that is dedicated to providing the best products and services to our customers.

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cities," naming those cities. Why, Mr. Chairman, that conductor on that little road would have to stop that train a half a day—unless he was a walking railroad guide. He could not remember what road reached those points, perhaps, and he would have to figure out in his own mind—and he would have to figure accurately, too—how many miles this passenger would go over each road.

Mr. HUDDLESTON. May I interrupt to ask the witness a question?

Mr. CAIN. Yes, Mr. Huddleston.

The CHAIRMAN. If you desire, although he asked to be excused, if possible.

Mr. CAIN. If Mr. Huddleston wants me to, I will answer his question.

Mr. HUDDLESTON. Right on that point. Under the former practice of the carriers, when they issued these mileage books they required that they be exchanged for tickets at the ticket window before entering the train.

Mr. CAIN. Yes, sir; and that is what we are arguing.

Mr. HUDDLESTON. Now, I want to ask this question: Do you not construe this statute as permitting the Interstate Commerce Commission to establish that practice as one of the rules for using these tickets?

Mr. CAIN. I do not so interpret it.

Mr. HUDDLESTON. That they shall be exchanged at the ticket window for a ticket before entering the train?

Mr. CAIN. I do not so interpret it; and I do not see how you could protect the roads that are entitled to a differential for carriage by doing it in that way.

Mr. HUDDLESTON. Let me suggest that it might be done by requiring the holder to go to the agent and say, "I want a ticket" to a certain place by a certain route, which, of course, means over a certain road. Then if the statute does authorize a differential, and I agree that it does not, the agent could collect the differential and issue him a ticket just like he had paid the money for it or had used his scrip book to purchase the ticket.

Mr. CAIN. Answering your question, Mr. Huddleston, I do not so interpret this law. Of course, my interpretation is not any better than that of any other lawyer, but the very fact that I do not so interpret it in good conscience shows the necessity for making the law clear, and therefore I respectfully suggest to the committee that it ought not to be left to interpretation. As Mr. Robinson suggested yesterday, the disposition of the commission is to regard itself as an agency of the Government charged with ministerial or administrative duties. Therefore they are inclined to look to the letter of the law and do not go into the field of interpretation in the decision of legal questions unless it is impressed upon them in such a way that they can not escape it. So my thought is that there is a way, as we will show you later by the proposed amendments, to cure that situation, or to put it beyond question, and it seems to me that is the wise thing to do, and not leave it for interpretation and to become a matter of irritation.

Now, if you will let me proceed I will show you how impracticable, or, rather, how impossible, it seems to me, it is to avoid this situation, which I was trying to explain when the committee recessed yesterday.

This conductor, assuming that the passenger is going to travel a considerable distance, must figure out on the train the mileage that the traveler will use on each different railroad over which he must travel to reach his destination. Now, suppose he takes the mileage for the whole trip in order to avoid the possibility of the abuse which I discussed yesterday, and which one member of the committee seemed to think might be avoided in that way. He takes that mileage and must give to that passenger some credential or conductor's check to be shown to the succeeding conductors in his journey and in order that they may have something to turn in to the auditor of that particular road as a check upon him and as a check upon the initial carrier, which has the money and with which a settlement can be demanded.

Now, it might be said, "Well, this conductor at the end of his run can say to the other conductor, like they do on some other routes, 'I have this man's fare.'" Now, you must bear in mind that many, many railroads do not go into the same depot. Many trains do not make connection with other trains in any through route. Therefore there is no chance for one conductor to communicate with another conductor.

The wisdom of the railroads to protect themselves against abuses in the issuance of scrip or mileage has been to make the purchaser of the ticket sign an obligation on his part, and the ticket contained provisions which covered the limitation of life of the ticket, as to the time within which it must be used, the fact that it is not transferable, and an obligation to permit it to be taken up if a man violated that obligation; also a statement that the conductor him-

self was not permitted to take off coupons or mileage beyond his own run; a statement that detached coupons will not be honored; a statement that the cover must be presented to conductor for inspection when exchange tickets are presented for passage, and be surrendered to conductor who detaches last coupon hereto or who lifts final coupon of ticket issued in exchange for the last coupon hereto; and identification of holder as original purchaser must be established by signature and otherwise, to the satisfaction of any agent, conductor, or collector.

Now, if the commission was going to use any of these safeguards which the wisdom of the railroads has demonstrated ought to be used and which they tell you are not completely effective, that conductor who takes up the mileage to cover the through route or the interstate route must issue something that goes to the next conductor that will at least cover these points. There must be something that will identify the man who presents that conductor's check to the next conductor as being the original purchaser of the ticket. There must be some limitation. There must be some agreement on his part that he will use it within a certain time. If you do not do that, of course, you invite the activities of the scalpers and the establishment of scalpers' offices all over this country.

In addition to that situation, gentlemen, which you see is so difficult as that the human mind is not sufficiently informed to permit any initial conductor to do it—if he had the time—look at the other side of it and see how the railroads can be protected against the little road of 4 miles or of 10 miles down in Florida, which sells these tickets and puts the money in its own treasury until it has evidence that the mileage has been used. There must be a constant accounting. This little 4-mile road which I spoke of would get, at a rate of 2½ cents a mile, 10 cents. A 1,000-mile or 5,000-mile ticket might be used in as many as 100 or 200 different trips. The postage alone in settlements between the carrier that took up a part of this mileage and the initial road would be far more than the 10 cents that the road got out of it.

In addition to that they would have to increase their clerical forces and, gentlemen, while it is a small matter in the concrete or abstract, it is just the difference between life and death to many of these smaller railroads. To-day, they are going through a crisis. They have floundered in the wake of the war, and out of the war has come a condition or a situation that overshadows and discourages and threatens many of these railroads with small earning power. They cannot stand even a small increase in their expenses.

Now, another objection which will not amount to so much with the little line is that of the abuse of these tickets for baggage. I rather believe that the commission could control that, and therefore it is not of so much moment as the two objections which I have presented to you.

Finally, there is this objection, which is closely associated with the one I first presented, and that is, it seems to me there is a sentimental or psychological objection, if you please. I do not believe that legislation is wise that throws out temptation which may and does appeal to the weaknesses of humanity. I think you can pass a law here that will accomplish what the proponents are desiring, to a very considerable extent, without leaving it in the shape that it is proposed to leave it, and which, in my judgment, will necessarily cause these abuses.

Now, what are the beneficial effects of the law that is proposed? First, it is asserted that it will stimulate travel. To be candid with you, I think it would stimulate travel to a small degree. I do not think it will stimulate travel sufficiently to compensate for the losses that will occur on the other side of the ledger, but I do believe it will stimulate travel in this way: It will be used almost exclusively by people who are going to take long trips. The merchants will use it for sending out traveling men, and a man who is going to take a long journey across the country or of several hundred miles will go and buy a 1,000-mile ticket, because he can save money; but those are comparatively rare instances.

If you travel upon the trains to-day, even at the high price of transportation, and you are as observant as some of us are with regard to the use of passes or the character of people who are on the trains, I think you will be surprised to find the proportion of people who are traveling for social reasons and for social purposes as compared with the people who are traveling for business. You will find, I think, the majority in almost every train is composed of women and children and old people, who are simply traveling for the purpose of visiting friends or relatives.

Attention has been called by the proponents of this bill, and I am somewhat surprised to see the latitude of the imagination of some of the gentlemen, but it is asserted as a fact that the passenger travel has declined greatly within the past few years, and the proponents present that as a convincing reason why the fares ought to be reduced, because, they say, the increased cost of transportation has minimized travel.

Now, gentlemen, I can give you a reason for the decline in travel that is not speculative at all. I operated a little railroad down in Texas 100 miles long. That road was finished in 1909, and prior to about 1916, for some three or four years, that road earned perhaps as much as five or six thousand dollars per annum from passenger business in excess of what it earned in 1918, 1919, 1920, and 1921. It all came from the use of the automobile along that railroad.

Mr. BARKLEY. Did you say \$5,000 a year?

Mr. CAIN. I say it earned \$5,000 more.

Mr. BARKLEY. That seems to me to be a very small difference.

Mr. CAIN. Well, it did a small passenger business, as a matter of course. I beg your pardon; I should have said \$5,000 a month instead of \$5,000 a year. That \$5,000 was the difference between the point of vanishing returns, and that road has been compelled, on account of the invasion of the territory by the automobile truck and the automobile passenger-carrying vehicle, to abandon passenger-train service entirely, because its passenger revenues were so reduced. Good roads were built right along beside it, and I happen to know that these very people—the merchants and traveling men—who claim that they are going to be large beneficiaries, prior to the increase in the cost of passenger transportation, had practically abandoned the use of my railroad. I knew those gentlemen. I was on that road very frequently and I know the traveling men. I lived in Dallas, Tex., which is the metropolis of that section; met them in the hotels along my line, and wherever I stopped at night the street in front of the hotel was filled with automobiles that would drive up there at sunset, and every automobile had from two to four traveling men. They used the automobile because they can make towns that are not on the railroad. The merchants did not use that road, and they do not use any of these little railroads, substantially, when it comes to transportation, and that is a situation that Congress must meet sooner or later.

I see it stated in the papers that during the present year the appropriation from the Treasury of the United States will be as much as \$700,000,000, and that, supplemented by the contribution from the States, will amount to several hundred millions you are going to spend to build additional public highways to be used without compensation so far as the automobile is concerned, and kept up and paid for, so far as the State's part of it is concerned, by taxation upon these railroads, they paying the greater proportion of the original construction and the maintenance of these properties.

Mr. SANDERS. I doubt if your figures are accurate as to the amount of the appropriation out of the Federal Treasury.

Mr. CAIN. I may be wrong, Mr. Sanders. I saw that in the papers the other day, and I have not had a chance to investigate it.

Mr. HOCH. I think that was for a 10-year period.

Mr. CAIN. Seven hundred million dollars was stated in the newspapers to be the amount. The newspapers often get such figures wrong, and I merely stated that I had seen that in the papers. I know that we are spending many millions of dollars, and we all know that.

Mr. SANDERS. Yes; we are spending enormous amounts; but I am very sure your statement with reference to the proportion from the National Treasury is not accurate.

Mr. CAIN. I do not present it at all as being correct, and I am glad to be corrected.

Mr. GRAHAM. The last appropriation, I think, was \$75,000,000.

Mr. SANDERS. We have not yet passed the bill, and we do not know what it will be yet, but I think it is going to be somewhere between \$50,000,000 and \$100,000,000.

Mr. GRAHAM. Of course, it is true, Mr. Sanders, that the appropriations by the States for similar purposes are largely in excess of that amount, so that in the aggregate they might run up to even the amount named.

Mr. SANDERS. Yes.

Mr. GRAHAM. But that is not from the Federal Treasury.

Mr. SANDERS. And the statement he made was with reference to the Federal Treasury alone. It is an enormous amount; and I quite agree with the witness

that there will eventually have to be some way of making the users of the highways pay the bill.

Mr. CAIN. I would like, Mr. Chairman, to have the privilege of correcting that in the record. I do not want to make a misstatement of fact.

The CHAIRMAN. Will you verify that and in revising your statement put in the proper amount?

Mr. CAIN. Yes; with your permission. Now, the other beneficial effect which is presented here is the matter of convenience. I think there is some merit in that statement. I believe that it would be more convenient if a purchaser of this ticket could avoid having to go to the ticket window and buy a ticket or if he could go direct to the baggage room and check his baggage; but to my mind that benefit is far overbalanced by the injurious effects which I have mentioned, and it seems to me that that convenience, whatever it may be, should be surrendered in the public interest.

Now, having presented, as I see it, the objections as well as the beneficial effects, I want to read to the committee three or four typical letters which have come to the American Short Line Railroad Association, presenting the views of individual carriers of the short-line class, and when I have done that I am going to present these proposed amendments.

I will first read a letter from the secretary of the road to which I alluded a moment ago, the Delaware & Wildwood:

"Our attention has been called to Senate bill 848, which provides for the sale of mileage books on all railroads. If passed, it will require all short lines to maintain an accounting system that will be expensive and a great burden to them.

Most short lines are operated on a division of joint revenues with connecting trunk lines, in which allowances are made for terminal facilities afforded by the short lines. The mileage tickets would destroy this arrangement to the extent it was used.

"Our railroad is almost exclusively a terminal for the Philadelphia & Reading system in the city of Wildwood; is less than 5 miles in length, and for us to honor mileage tickets sold by the trunk lines or be compelled to keep them on sale would be ruinous.

"Short lines could not exist on such an arrangement.

"The bill should be amended so that it does not apply to short lines; they are the feeders for the trunk lines, have no mileage to depend upon, and must have the extra remuneration allowed in order to maintain their service and pay their running expenses."

I will now read a letter from the Middle West.

Mr. LEA. Has the Federal Commission so far exercised any rate-fixing control over the particular road to which you refer?

Mr. CAIN. Yes, sir; that road is being sued now by the Reading for a readjustment of divisions, the Reading claiming it is only 4 miles long and it is getting too much of the joint revenue for the service it performs. By being sued, I mean that the matter is pending before the commission.

Mr. HOCH. Does that road now sell tickets over other lines?

Mr. CAIN. Yes, sir; it interchanges with other roads.

Mr. HOCH. That is to say, you can go to the station of that little 4-mile road and buy a ticket to San Francisco or some other distant point?

Mr. CAIN. I do not know about that. They do interchange with the Reading, but I do not think they interchange all over the country. They would be required to do it, as a matter of course, under this bill.

Mr. HOCH. I was wondering under the present situation to what extent they could sell tickets to various points in the country.

Mr. CAIN. Mr. Robinson tells me they are limited to Philadelphia, which is 60 miles away.

Here is a letter from the managing director of a line out in Wyoming, the Wyoming Railroad in the State of Wyoming:

"I and some of my associates, mostly residents of Iowa, are operating what is known as the Wyoming Railroad in the State of Wyoming. The road is some 30 miles in length, has a small traffic density, and consequently must charge a much higher rate per passenger per mile than is charged by the Chicago, Burlington & Quincy Railroad, its connection. What might be fair to the Burlington Railroad would be an act of injustice to us as compared to such a railroad like the Burlington unless there was some means devised by which our loss could be compensated for in the matter of divisions or unless

the books were issued in coupon forms, and we would be entitled to detach more coupons per mile than would be the case with the Burlington Railroad which we might call a Class A road.

"The Wyoming Railway Co. during the year 1921 operated at a loss, and this bill would be an injustice to us if it compelled us to accept a larger loss in order to accommodate a relatively small number of the people of the United States who avail themselves of the privilege of mileage books."

Farther west, the Nevada Copper Belt Railroad Co. writes this:

"We are seriously objecting to the provisions as provided in Senate bill No. 848—matter of interchangeable mileage books stop. It will not only reduce our revenue to an unprofitable point for carrying passengers but put us to much additional expense in keeping an accounting with several hundred railroads. Short lines can not afford to handle traffic as cheaply as the trunk lines, and it would be unfair to all such lines if the bill became a law, and I will ask that all short lines be excluded from the burden of expense and the loss of needed revenue at this time."

The Sierra Railway Co. of California writes:

"This bill, if it becomes a law, will be a great hardship on short-line railroads and particularly upon a railroad situated such as the Sierra Railway Co. of California. Our passenger business has been very greatly taken away from us by jitney travel and private automobiles so that our passenger business is run practically at a loss and we could not afford to run our passenger trains were it not for the mail and express business. Our rates are as low as we can afford to operate our passenger trains, and mileage books always have been and probably would be at a lower rate than charged for regular fares. The accounting of mileage books would add to our losses as the same must cause a great deal of accounting detail. Under these circumstances we hope that you can consistently use your influence and vote against the interchangeable mileage book bill, or if you can not consistently vote against the bill that you will at least see that the same is amended so that short line railroads will be exempted from its provisions."

The same road says:

"We would like to add to the objections to the bill as contained in ours of the 11th ultimo the following further considerations in relation to this proposed legislation: We have already had experience in regard to honoring scrip issued by the railroads and found that this greatly added to our expense of accounting without any additional revenue to the company. If our road was a large one and had a considerable amount of scrip or interchange mileage to handle our agents and conductors would become familiar with the rules and practice in relation to the same, but with the multitude of accounting rules in relation to a transaction of this kind, the rectifying of mistakes and keeping track of the same in the general office is out of all proportion to the business involved. It is more than likely that we would be asked to accept lower than our regular passenger fares for mileage books, and this we can not afford to do as our passenger business at the present rates is not a source of profit to us."

"We can not see that the proposed plan would add any revenue to this company, but on the contrary would increase our expenses."

I said that those are typical of the letters we have in our office from the short-line railroads.

Mr. SANDERS. Before you go to the amendments I want to ask you about the bill in its present form. In the last day or two it has been urged that this committee report the bill as it came from the Senate. You agree with me that this bill on its face provides for uniform rates throughout the country?

Mr. CAIN. It certainly does, as I construe it.

Mr. SANDERS. And it applies to all carriers?

Mr. CAIN. Yes, sir; the commission can not eliminate any carrier in its present form.

Mr. SANDERS. The bill, I think, is constitutional upon its face, because it provides that the rate to be fixed is a reasonable rate per mile.

Mr. CAIN. I agree.

Mr. SANDERS. That makes the constitutional point fixed?

Mr. CAIN. Yes, sir.

Mr. SANDERS. But since it must be a reasonable rate per mile, since the rate must be uniform throughout the country, since it must be a constitutional rate, does not that mean that the carrier which requires the highest rate in order to meet the constitutional requirement against confiscation would become the minimum uniform rate that could be fixed under the Constitution?

Mr. CAIN. I do not think that I catch the question.

Mr. SANDERS. The rate must be uniform and it must be a constitutional rate?

Mr. CAIN. Yes, sir.

Mr. SANDERS. Take some of these small carriers which require higher rates in order to have a reasonable return?

Mr. CAIN. Yes, sir.

Mr. SANDERS. The Constitution guarantees and this statute guarantees that the rates shall be reasonable as to all the carriers. Does not that make the carrier which requires the highest rate in order to protect its constitutional right, does not that make the highest rate the minimum that could be fixed under this law?

Mr. CAIN. Well, that would depend upon whether or not the commission would take up and consider the situation of the carriers generally. I imagine the commission would say that we must administer this according to the American idea of the greatest good to the greatest number. Clearly, to my mind, Mr. Sanders, the carrier would have a perfect right and would be able to sustain its position in the courts, of asserting that the action of the commission was confiscatory, and, therefore, unconstitutional as to that particular road.

Mr. SANDERS. As to that particular road; but since the rate must be fixed so that it can compel each carrier to accept it, must not the rate fixed by the commission, in order to be a valid rate, be such a rate as will protect the constitutional guaranty as to the carrier requiring the highest rate? In other words, suppose you have a carrier here that can not possibly carry, without a loss, below 4 cents per mile—I use that as an illustration—and suppose anything below 4 cents a mile would be confiscation under the Constitution as to that carrier, under this idea that the rate must be uniform, does not the standard of that one particular road become the minimum to be fixed?

Mr. CAIN. That is a very nice legal question, Mr. Sanders. I am not prepared to give an opinion that would be worth much. I see the force of your suggestion. The commission might well hold or the courts might well hold that the commission had fixed a uniform rate and that it had no right to disregard the fact that if the rate were not high enough to take care of every carrier it would not be constitutional, and, therefore, not uniform.

Mr. MERRITT. What would you say as to the possibility of changing this proposed law to conform to the Esch-Cummins plan of zones or regions? Could not the commission fix a rate for a region as they fix the freight rates?

Mr. SANDERS. It is my personal opinion that the bill would have to be rewritten, and we would have to allow considerable latitude for the commission in order to accomplish anything. The reason I have been asking this line of questions is to demonstrate that, although we may pass the law and it may be constitutional, that if it were in force it would not at all accomplish what the proponents of the bill want to accomplish, because what they want is a reduction in rates. If we are to have a reduction of rates and yet pass a constitutional law, we absolutely can not have a uniform rate throughout the country?

Mr. CAIN. No, sir.

Mr. SANDERS. There may be some sort of grouping and elimination for the smaller lines which necessarily must have the higher rates?

Mr. CAIN. And in order for it to be a joint rate the commission must pass an order that will compel the carriers to join in its practical operation.

Mr. SANDERS. And under this law it would not have any authority to have nine hundred and ninety-nine carriers out of one thousand join in it; but it must be good as to all carriers under the law as written.

Mr. HUDDLESTON. May I suggest, Mr. Sanders, that manifestly no carrier whose rates were not made confiscatory by the order of the Interstate Commerce Commission would attack it, and the other carriers could ignore the order if it were confiscatory by refusing to issue books or by refusing them when issued. So the net result would be that the book would be in effect among the carriers where they yielded a remunerative rate, and it would not be among carriers where the rate was confiscatory. That seems to me to be the way it would work out.

Mr. SANDERS. Of course, a carrier which did not have its constitutional rights invaded could not object; but if a carrier which did have its constitutional rights invaded should make objection and that objection were sustained, then that would make the rate fixed for all of the carriers an unreasonable rate. I do not think that it could exist in part and be laid aside in part.

Mr. HUDDLESTON. The order would fall as to that carrier which attacked it, because it would only be confiscatory as to that carrier, and it could not fall for any other reason, but it would remain in effect as to carriers whose rates were not confiscatory.

Mr. SANDERS. The trouble with that view is that the rate under the statute must be a reasonable rate because of the requirements, and if not a reasonable rate for all the carriers the commission is not carrying out the terms of the statute.

Mr. LEA. It seems to me, Mr. Chairman, that the rules of statutory construction would reconcile this statute as it stands and, according to the rules of construction, I do not think this would require a uniform rate, a just and reasonable rate per mile, not all the road, but per mile, the statute says, and you can not have a just and reasonable rate per mile and a uniform rate throughout the country. A just and reasonable rate per mile is the constitutional requirement and a uniform rate is the statutory requirement. The court will not place a construction upon a statute that makes it unconstitutional. Therefore, the court will first grant the constitutional right that the rate must be just and reasonable, and that prohibits a uniform rate, because the two are not possible, are they?

Mr. GRAHAM. It runs in my mind that some of the old mileage books I used to use had a list of roads on the back of them upon which the conductor was authorized to take more mileage because of an increased fare on those roads. I was wondering if that same proposition could not be incorporated in this?

Mr. LEA. I think the Interstate Commerce Commission would be driven to the application of the law.

Mr. GRAHAM. Mr. Cain, am I wrong about that? That is my memory.

Mr. CAIN. I think you are entirely in error. I do not think that has ever been done; at least I have never heard of it.

Mr. GRAHAM. I have that distinctly in my mind.

Mr. CAIN. They have done this; they have permitted scrip to be used that way, because that represents money; but so far as mileage is concerned I never heard of it.

Mr. JONES. I have seen on books that between certain points named so many miles shall be deducted from the book.

Mr. CAIN. I never heard of it.

Mr. JONES. That was simply a contract relationship between the railroad and the individual.

Mr. CAIN. If I may be permitted——

Mr. SANDERS (interposing). Just pardon me, Mr. Cain. Leaving out the question of going into court or not, is not the Interstate Commerce Commission bound, under its oath, the individual members, to fix the rates so they will not be confiscatory as to any road?

Mr. ——. Yes, sir.

Mr. SANDERS. So that outside of the question of any court procedure, in the event they violate its constitutional rights to the point of confiscation, the road requiring the highest rate will become the minimum fixed under this law.

Mr. HUDDLESTON. Mr. Sanders, the bill does not use the expression, "uniform."

Mr. SANDERS. I know it.

Mr. HUDDLESTON. There is only one expression in the bill that would indicate a uniform rate and that is "interchangeable."

Mr. SANDERS. And it applies to all carriers, and it says that it must be a mileage ticket, that means a mileage ticket, and it must be good for carriage. That is all there is to indicate it.

Mr. GRAHAM. Under this act, Mr. Sanders, the Interstate Commerce Commission could provide, in making its just and reasonable rate for a mileage ticket, certain classifications of these roads and print them on the back of the ticket itself, so that a certain amount of mileage will be taken on one class and another amount of mileage on other roads.

Mr. SANDERS. I do not think so.

Mr. GRAHAM. Why?

Mr. SANDERS. Because it does not. The act says that the commission is directed to require each carrier to issue at such offices as may be prescribed by the commission joint interchangeable mileage tickets at a just and reasonable rate per mile, good for interstate passenger carriage upon the passenger trains of any and all other carriers by rail subject to this act. I think that specific provision of the statute would forbid that construction.

Mr. HOCH. I should like to make an observation on that. It does not seem to me that the language "just and reasonable rate per mile" in itself requires a uniform rate. The question that presents itself to me is whether by the use of what is known in the trade as a mileage ticket it is possible to have a rate which is not uniform.

Mr. SANDERS. And the further statement that it must be good on all trains?

Mr. HOCH. Yes, sir. I think the fact that it is a mileage ticket is right in harmony with the idea of being good on all trains. The question is whether you can have what is technically known as a mileage ticket that will not provide a uniform rate. I do not see, after this discussion and the commonly accepted meaning of a mileage ticket, how you could possibly have a mileage ticket without having it uniform, although I can see the force of Mr. Lea's argument that the words "just and reasonable rate per mile" do not require a uniform rate.

Mr. SANDERS. The Senate bill originally provided for 2.5 cents. They cut that out and let the commission fix the rate.

Mr. LEA. I agree that the bill should be amended in that respect. It does not say good on every train at a just and reasonable rate per mile. It permits the classification. You get a ticket that is salable on a unit basis of the per mile and get it at a just and reasonable rate per mile on any and all trains.

Mr. HOCH. If you said a scrip book at a just and reasonable rate per mile, etc., then I do not think there would be any contention that that would really be a uniform rate.

The CHAIRMAN. What difference would it make, so far as you have "per mile"? If you make the unit per mile, you have the same trouble about the value.

Mr. HOCH. A mileage ticket is a ticket, as I understand, from which must be torn out a certain number of miles for the number of miles traveled.

The CHAIRMAN. At a given cost.

Mr. HOCH. It would be better to say a just and reasonable rate, it seems to me, and to allow for a variable rate, according to the rate that was in effect upon the road upon which the passenger was traveling, and the only question is whether that particular ticket which he is using is subject to the varying rates.

Mr. SANDERS. This is simply a mileage ticket.

The CHAIRMAN. You mean, Mr. Hoch, for every mile you go you take out the running charges of the road it is used on?

Mr. HOCH. I mean this: I would buy \$100 worth of transportation for \$80. That would be represented by coupons, representing cash, and on its face it would say \$100.

The CHAIRMAN. But on the basis of per mile?

Mr. HOCH. No, sir. That could be torn out on the basis of a just and reasonable rate per mile.

The CHAIRMAN. That is all right; but you do not buy it on the basis of a just and reasonable rate per mile; that is a different matter.

Mr. CAIN. Shall I resume, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. CAIN. I was going to say this before presenting these proposed amendments: While our organization believes that it would be a mistake not to eliminate from the bill this matter of mileage, we have drawn the amendments so that that matter still remains for the consideration of the commission. I want to make this suggestion to you: You should bear in mind that you are dealing not with 200 class 1 carriers in this law, but you are dealing with a thousand carriers, 800 of which are little carriers, the officers of which do not know the names of the other railroads in the United States at all, plus the electric lines. You should also bear in mind that the commission has already come before the committee, after investigation by its legal department, and has given its opinion as to whether this is uniform as to how it requires them to put it into effect. Mr. Esch's attack upon the bill, based on opinion of the legal department of the commission, referred to the fact that they were required to do this, and that some roads were entitled to a greater mileage than others; at least, that is my recollection.

I am going to ask the secretary to place before you the proposed amendments, and in order that you may check the amendments as I suggest them for the record you can follow me easily. I have underscored those changes that we propose in the act, but I suppose it is necessary for me to take these up by line so that the amendments may be made clear.

The first change that I suggest is to strike out the word "two," in line 7, and insert in lieu thereof the word "three."

Mr. COOPER. In line 6 or 7?

Mr. CAIN. In line 7; is in the act I have. I am addressing myself to line 7 in the Senate bill 848, strike out the word "two" and insert the word "three" in lieu thereof. In line 11 strike out the two words, "mileage ticket," and insert the phrase "scrip mileage book."

Mr. HUDDLESTON. Is it your desire to explain the amendments as you suggest them?

Mr. CAIN. Yes, sir; if you desire.

Mr. HUDDLESTON. Why use the word "mileage" in your amendment?

Mr. CAIN. That, as I said, was put in there because, so far as the short-line railroads are concerned, we are not contesting this bill except to the extent that will be shown hereafter, and if Congress believes that mileage should be retained it is not objectionable on our part, although I think it is objectionable.

Mr. HUDDLESTON. You do not use the term "scrip mileage"?

Mr. CAIN. "Scrip mileage book."

Mr. HUDDLESTON. What does that mean?

Mr. CAIN. That means a book of scrip covering—if the commission wants to issue certain mileage they use the scrip to that extent.

Mr. HUDDLESTON. My understanding is that "scrip" means money, and "mileage" means transportation for a certain distance in miles?

Mr. CAIN. It does.

Mr. HUDDLESTON. It seems to me that you are looking two ways at the same time.

Mr. CAIN. The thought I had was this, that Congress might believe it might be important to confine or limit the amount of scrip to a certain number of miles and that the commission in issuing the scrip, fixing the maximum of scrip or the minimum, might be guided by the number of miles they thought it should cover.

Mr. BARKLEY. Your amendment eliminates the ordinary mileage book, as I understand, and substitutes the scrip book?

Mr. CAIN. Yes, sir.

Mr. BARKLEY. Which the passenger must take into the office and exchange?

Mr. CAIN. Yes, sir; my amendment covers that.

Mr. BARKLEY. It eliminates the mileage book entirely, as it is ordinarily understood?

Mr. CAIN. Yes, sir. If it appeals to the committee they could cut out "mileage" and just say "scrip book," but I left that in because I thought there might be some desire on the part of Congress or the proponents of the measure as to the minimum miles.

Mr. HUDDLESTON. "Scrip" has a technical meaning and refers to a substitute for money?

Mr. CAIN. Yes, sir.

Mr. HUDDLESTON. It is used in that sense.

The CHAIRMAN. If you issue a book on a mileage basis you define the number of miles covered by the book?

Mr. CAIN. Yes, sir.

The CHAIRMAN. If you issue on a scrip basis, will you not be obliged, of necessity, to define the book by the number of dollars represented by the scrip?

Mr. CAIN. Yes, sir. It seems, Mr. Chairman, if you are going to give the commission the power to reduce the rate that you could give them the power to deal with the number of miles that they are going to issue the scrip to cover. In other words, this is authorizing scrip to be issued to be used for tickets, without saying how many miles and without giving the same measure of value to the scrip—it seems you would have accomplished nothing.

The CHAIRMAN. But you do; you give \$50 worth of transportation at any rate prevailing on the roads. The very minute you put in scrip and give mileage it seems to me you must give the value of each little piece of scrip at so much a mile definitely all over the country, if it is interchangeable, or else you have got to go through the elaborate form of saying somewhere on the ticket that in the event of something or other happening this is not 3 cents a mile but is 4 cents or 5 cents or 10 cents a mile.

Mr. CAIN. You can undoubtedly cover that by the commission having the authority to sell scrip books covering so much purchasing power at a reduced rate.

The CHAIRMAN. Yes; at \$20 or \$50 or \$100, whatever they chose?

Mr. CAIN. Yes.

The CHAIRMAN. And then they would provide for it at the prevailing rate established by the commission?

Mr. CAIN. Yes.

The CHAIRMAN. But it seems to me automatically impossible to define the number of miles you can travel in a road unless you define the value of each piece of scrip. I agree with Mr. Huddleston about that.

Mr. CAIN. I appreciate that difficulty, and, as I say, that can be cured, as a matter of course, by eliminating the mileage feature from it entirely.

Mr. HOCH. Following that suggestion, then, the bill should read or contain a provision to the effect that this book should be issued with a face value, let us say, of not less than \$20 nor more than \$100, or some other fixed amount.

The CHAIRMAN. Yes; something definite. However, I doubt if we are following the wise course, myself included in the suggestion, by interrupting Mr. Cain in his elaboration of his amendments, and the chairman would like to suggest that we allow him to proceed to give us his whole thought about the matter.

Mr. CAIN. I want to say to the committee that my effort here is to really be of some assistance to the committee, and I am not dogmatic about these particular features. I was trying to reserve all the power possible in the commission and was trying to disturb this bill as little as possible.

In line 14 I strike out the word "tickets" and substitute "scrip mileage books."

In line 15 strike out the word "for" and substitute the phrase "to cover and include."

In line 1, on page 2, after the word "miles," interline "or so as to be equivalent in amount to such a sum or sums of money as the commission may prescribe."

In line 2, page 2, strike out the word "tickets" and substitute the phrase "scrip mileage books."

In line 6 strike out the word "tickets" and substitute "scrip mileage books."

After the word "required" in line 7, strike out all the balance of line 7, all of line 8 and line 9, and after striking out the language referred to add the following—

Mr. GRAHAM. That is with reference to the baggage privilege?

Mr. CAIN. Yes. Add the following proviso, "provided, that upon application to the commission any common carrier or carriers which, by reason of inadequate earning power or for other good cause, ought not, in the opinion of the commission, be required to issue or honor such interchangeable scrip mileage books, may, by order of the commission, be received from the operation hereof in such manner and to such extent as the commission may decide: *Provided further*, That the provisions of this act shall not apply to a street railway not operating as a part of a general steam railroad system of transportation."

Make a new section 3 in lieu of the present section 3 and it therefore becomes necessary on line 10 to strike out the figure 3 and insert in lieu thereof the figure 4, and change section 4 now worded as section 3 in the following particulars:

On line 12 strike out the word "ticket" and insert in lieu thereof the phrase "scrip mileage books."

Section 3, which proposes to substitute in the bill for the present section 3, reads as follows:

"Interchangeable scrip mileage books shall be composed of coupons in such form and denominations as may be fixed by the commission and shall be received in payment for tickets in the same form as if sold for money at all stations where tickets for transportation of passengers are on sale by carriers not exempted by the commission. Such scrip mileage books shall not be used except for the purchase of tickets and shall not be honored for payment of fares on trains."

I have supplied the committee with an amended bill which has been prepared in accordance with the suggested amendments which have gone into the record.

Mr. GRAHAM. Mr. Cain, this proviso in section 2, which you have inserted here, gives authority to the Interstate Commerce Commission to exempt from the operation of the act certain roads, on hearing, when it is made to appear to the commission that by reason of inadequate earning power or for other good cause, the commission thinks the road ought not to be included in this interchangeable mileage. The question in my mind is how far the inclusion of such a proviso might possibly invalidate this act. Is it not necessary that an act

of this kind, in order to meet constitutional tests, must be uniform in its operation?

Mr. CAIN. Well, of course, the commission can make classes. If the classification is reasonable, of course, they could exempt certain carriers. In other words, they could classify carriers according to earning power, as they have done already.

Mr. GRAHAM. This, of course, does not create any classification. It simply makes it possible for one road to be under the system and the other out.

Mr. CAIN. It does the same thing, Mr. Graham, that you have given the commission the power to do with regard to the long and short haul clause. The commission is given power to exempt certain carriers from the provisions of the law for certain reasons which may be shown to the commission, the reasons not being given in the law itself.

Mr. GRAHAM. Yes; to meet, for instance, water competition.

Mr. CAIN. Well, to meet the short haul. Certain circuitous routes may be authorized by the commission to meet the rates of the short-haul carriers, provided they are remunerative.

Mr. GRAHAM. You think this proviso would meet all the constitutional tests, then?

Mr. CAIN. That is my opinion, Mr. Graham, after some investigation. I find that while, of course, the courts have held that there can be no delegation of legislative power, yet in the creation of commissions as agencies of the Government, they have gone very, very far.

Mr. GRAHAM. Let us pass that for the moment. What do you intend by the proviso that the provisions of this act shall not apply to a street railway not operating as a part of a general steam-railroad system of transportation? Do you mean by the term "street railway" any company doing a purely local business, or do you mean a street railway inside of a city? Just what would be the meaning of the term "street railway"?

Mr. CAIN. Any street railway that is subject to the interstate commerce act. I do not know whether you were present yesterday when I named a number of street railways that are interstate railways. The commission here has control of the street railways running out of Washington into Maryland and across into Virginia.

Mr. GRAHAM. Yes; I was here and heard your remarks on that subject, but still I am unable to tell just what might be considered as a street railway and what might not.

Mr. CAIN. Well, that has a well-understood meaning in the commission. You will find in the transportation act of 1920 that that exemption is used in various statutes. It is used in the labor statute, for instance, and it is used in other provisions of the transportation act of 1920.

Mr. GRAHAM. Now, you are well informed on this subject; tell me what a street railway is.

Mr. CAIN. A street railway is a railway running through the streets of a city or a village and used for passenger business.

The CHAIRMAN. In whole or in part, because frequently they go off of the streets and onto a right of way and then back into the streets again.

Mr. CAIN. Yes. Street railways are usually operated under franchises and use the public streets and highways without owning them. They have a mere easement.

Mr. GRAHAM. Yes; let me call your attention to the fact that the Washington Railway & Electric Co. here runs a line from here to Rockville, and part of its operation is in the District of Columbia and part of it through open country, where they doubtless acquired a right of way in the ordinary method, and part of it is in the city of Rockville; is that a street railway?

Mr. CAIN. That would not be a street railway within the meaning of the term as used in the transportation act.

Mr. GRAHAM. It would not be?

Mr. CAIN. No; because they used the expression, street railway or electric urban or interurban, designating three different kinds of carriers.

Mr. BARKLEY. Does this exemption contain the exact language of the transportation act?

Mr. CAIN. Yes; except it does not apply to the other two carriers—interurban or urban.

Mr. BARKLEY. I thought that the exemption in the transportation act applied to street, electric, interurban, and urban railroads.

Mr. CAIN. Street railways or street electric railways.

Mr. BARKLEY. Yes; and this language of yours did not seem to be as full as the language used in the transportation act.

Mr. CAIN. It is identical, with the exception that I do not use the word "electric," because some street railways, if they are not using it now, are going to use the gasoline car instead of using electricity. There is a car being put on the market which I think will be used in lieu of electricity in some municipalities.

Mr. JONES. Mr. Cain, is it your thought in the drafting of this proposed modification of the bill we are considering to make it apply to every common carrier subject to the interstate commerce act, and to provide for a uniform rate for all carriers except those that might be exempt under this proviso?

Mr. CAIN. Yes.

Mr. JONES. And that roads which by State statute or by order of the Public Service Commission now charge a higher rate of 4 or 5 or 6 cents, unless they become exempt under this proviso—

Mr. CAIN (interposing). If you will allow me to explain, Mr. Jones, I mean that the scrip will be sold at a uniform price. The commission may by order do what has been suggested, and instead of completely exempting a carrier it may, as I suggested here, issue orders that will protect that carrier, and that particular carrier might be authorized to take off more scrip when the scrip is presented.

Mr. JONES. What language in your proposed bill do you think takes care of that?

Mr. CAIN. Merely giving the commission the power of dealing fully with the question: "*Provided*, That upon application to the commission any common carrier or carriers which by reason of inadequate earning power or for other good cause ought not, in the opinion of the commission, be required to issue or honor such interchangeable scrip mileage books may by order of the commission be relieved from the operation hereof in such manner and to such extent as the commission may decide." It might not relieve them entirely.

Mr. JONES. You think that is broad enough, then, to authorize the commission to say that in a joint ticket over a road that has a higher rate than 3.6 cents per mile a larger percentage of scrip can be taken?

Mr. CAIN. I think the commission would have that power. My thought was to make this as elastic as possible.

Mr. JONES. If that is the thought I can not see how you can designate the size of your book as a 5,000-mile or a 10,000-mile or a 1,000-mile book.

Mr. CAIN. If you said that a man could buy a scrip mileage book of the face value of \$100 for \$75, there is the saving to the passenger or the purchaser of that ticket. Then the commission could partially protect some carriers that would want to be retained—

Mr. JONES (interposing). Then whether that was a 1,000-mile book or a 5,000-mile book would depend upon whether the rate is 10 cents a mile or 2 cents a mile?

Mr. CAIN. As I have left it, 5,000 miles is the maximum basis, but the mileage feature of it could be eliminated and it could simply be put upon the face-value basis.

Mr. JONES. You provide here for a maximum book of 5,000 miles and a minimum of 1,000 miles, and if there is not going to be a uniform price per mile in its use—I am not speaking about its purchase, because I can understand how a 5,000-mile book can be bought for \$50—then in its use, where some roads have a rate of 6 cents and others a rate of 3 cents, how are you going to fix the size?

Mr. RAYBURN. Mr. Jones, let me ask you a question. Does it seem to you it is necessary under Mr. Cain's proposal here to mention the miles at all?

Mr. JONES. No; it does not, but he has mentioned it.

Mr. RAYBURN. That is the way it seems to me under Mr. Cain's amendment.

Mr. JONES. I do not see how you can combine these two elements, a mileage book and a scrip book, in one book. That is what I am trying to get at. If you are going to have a minimum size in miles and a maximum size in miles, and then have different rates, I think you will have it all mixed up.

Mr. RAYBURN. Do you not think that if we are going to issue the scrip books, under Mr. Cain's proposition, that it ought to be for a certain amount of money instead of miles?

Mr. CAIN. I think I have explained to the committee that my purpose in suggesting that was merely to leave as much latitude as possible. It certainly is not a matter of any concern if the committee should eliminate the mileage

feature of its entirely; in fact, I think it would be better to do that, but I have tried to disturb the bill as little as possible in suggesting amendments to it.

Mr. SANDERS. I think Mr. Cain has too tender a regard for the language of the Senate bill.

Mr. CAIN. Mr. Robinson, I believe, wants to answer some question.

Mr. ROBINSON. May I answer part of the question of Mr. Jones, which I think was not fully responded to? If I understood him correctly, he addressed himself to the different rates and asked how this ticket was to be applied to lines that had different rates?

Mr. JONES. Yes.

Mr. ROBINSON. My conception of the matter, if this amendment should be adopted, is that the commission would fix, whether it be a mileage book or a scrip book representing dollars and cents, a minimum amount and a maximum amount which these books should be sold for, say \$50 being the minimum amount which the books could be sold for and \$150 the maximum amount. It would fix a rate of discount on those books of 10 per cent or some other rate of discount and the books would be sold for that amount and the purchaser at that time would receive his benefit from buying the book. That is what he is working for now, a reduced rate. When he wants to travel he takes that scrip book and goes up to the ticket office and gets a ticket from that company at the current mileage rate. He buys it just as if he had taken so much money out of his pocket.

Mr. JONES. Then that eliminates the provision in Mr. Cain's bill where he provides for a maximum of 5,000 miles and a minimum of 1,000 miles.

Mr. ROBINSON. I participated in the preparation of that amendment, and we left it there because it was already in the bill, but neither one of us concurred in the idea that it ought to be there, so far as that is concerned. We believe that that ought to be eliminated and that the commission ought to be authorized to fix the maximum and the minimum amount for which these books could be sold. That would at once simplify the question of the differences in the rate that is to be charged. A man is not entitled to buy a book in the East, for example, at 2½ cents per mile, we will say, representing a discount of 10 per cent on a mileage basis, and then go out into the Rocky Mountains, where these higher rates are necessarily charged, and use that book, where the percentage of discount would be some three or four hundred per cent, as compared with the smaller discount in the East; but if this book was used, as is suggested, when he went out there he would pay the rate that is charged out there and he would have received just exactly the same rate of discount.

Mr. MAPES. I assume the purpose of the first sentence on page 2 is to give that right in the use of these scrip books, is it not?

Mr. CAIN. Yes, Mr. Mapes.

Mr. MAPES. Where you say that these books may be required to be issued to cover and include any distance not exceeding 5,000 miles nor less than 1,000 miles or so as to be equivalent in amount to such a sum or sums of money as the commission may prescribe?

Mr. CAIN. Yes; that is the purpose.

Mr. MAPES. And you want to leave in as much of the language of the original bill as possible.

Mr. CAIN. That was the purpose, but this discussion impresses me with the view that perhaps to make our position clear, I should say that we prefer that you would consider an amendment with the mileage feature eliminated.

Mr. MAPES. I would like to ask you a question, having in mind the question which I asked Mr. Robinson yesterday. Could you, with definiteness, use the term "short-line railroads" in the last proviso of your section 2 along with street railway companies?

Mr. CAIN. Well, Mr. Mapes, there are some short lines—

Mr. MAPES (continuing). And if you did, would the commission and everyone else know just what was included?

Mr. CAIN. There are two objections to that, Mr. Mapes. In the first place, there is no definition of a short-line railroad, and you would be using a term that has no settled meaning.

Mr. MAPES. It is a popular expression, then, and not a definite—

Mr. CAIN (interposing). Yes; it is an expression that has grown up largely out of the elimination by the Government of certain independent, small roads. and when I say independent, I mean independent of the systems of trunk lines that own subsidiaries and branches.

Mr. MAPES. Has the commission ever attempted to define it?

Mr. CAIN. It has not. That is one objection. Then there is another objection which I think is equally important. Some of these short-line railroads by reason of competitive conditions want to be kept in the same status as the other railroads. In other words, if you issue scrip books in order to induce travel over the trunk lines, there may be some of them, under such competitive conditions, that would want to be in the same class as the trunk lines.

Mr. MAPES. Would it be a fair statement to say that a short-line railroad is one that has an inadequate earning power?

Mr. CAIN. No, sir; I do not believe so. Of course, Congress can define a short-line railroad, but it would be a very difficult thing to do.

Mr. RAYBURN. You would certainly be very much handicapped, if you accepted an interpretation like that, when you started out to borrow any money?

Mr. CAIN. Yes. I think, Mr. Mapes, that Congress can safely confide to the discretion of the commission questions of this character.

Mr. MAPES. I was not trying to suggest any congressional definition, but I was trying to get clear in my own mind just what is meant by a short-line railroad.

Mr. CAIN. Well, it has no accepted meaning further than I think the commission, and I know we do, regard those railroads that are independent of parent companies and are short in mileage, as being short-line railroads. For instance, there are some railroads that are short in mileage, but whose earning power puts them in with the class 1 carriers, but they are short-line railroads according to our understanding.

Mr. MAPES. But it is not your understanding that a road long in mileage could properly be termed a short-line railroad?

Mr. CAIN. No, sir.

Mr. MAPES. Even though its earning power was very weak?

Mr. CAIN. Even though it was a very weak road.

Mr. MAPES. I perhaps misunderstood Mr. Robinson yesterday, but I got that impression from what he said.

Mr. ROBINSON. I spoke more or less facetiously in response to your question as to a definition of a short-line road.

Mr. MAPES. I may be more ignorant on that subject than the other members, but I was asking the question in perfect good faith, and in thinking over it since yesterday, I am not clear as to just what the term meant, as I now understand you—a road must be a road with a limited mileage in order to be termed a short-line road.

Mr. CAIN. Yes.

Mr. MAPES. And as a rule, it is not a part of a general system?

Mr. CAIN. That is correct.

Mr. BURROUGHS. Mr. Cain, did I understand you to say a moment or two ago that, personally, if you could have this just as you wanted it, you would eliminate the mileage feature?

Mr. CAIN. Yes, Mr. Burroughs; I would. I think that would simplify it.

Mr. BURROUGHS. And you would put it on a straight cash basis?

Mr. CAIN. Yes.

Mr. BURROUGHS. In case that was done, the language immediately following the words "scrip mileage books," on page 1 in line 11, section 2—

The CHAIRMAN. Are you following the bill or the amendment?

Mr. BURROUGHS. The amendment. That would have to be changed, would it not?

Mr. CAIN. Yes.

Mr. BURROUGHS. And instead of being at a just and reasonable rate per mile, it would have to be at a just and reasonable discount?

Mr. CAIN. Yes.

Mr. BURROUGHS. And that would be your thought?

Mr. CAIN. Yes; and I would not say mileage books. I would say interchangeable scrip books, and if the committee will allow me to take these proposed amendments, I will undertake to eliminate that, and place back with you those clauses that express my ideas as modified here to-day.

The CHAIRMAN. Will you do that?

Mr. CAIN. Yes, sir; I will be glad to do that.

Mr. RAYBURN. Mr. Cain, I was wondering if this amendment suggested by you is acceptable at all to the people who are behind this legislation. In the first place, of course, they ask for legislation not only directing the Interstate Commerce Commission to issue a mileage ticket, but also directing them to

issue it at a fixed rate. If they could not get the fixed rate then they wanted the mileage book for convenience's sake to keep them, as they said, from going to the windows and buying tickets and paying for the baggage, etc. Your section 3 here has already been taken out of the bill, with reference to the fixing of a rate, and then your section 3 takes away from them the other feature of convenience?

Mr. CAIN. Yes, sir. I do not know whether you heard my suggestions on that or not.

Mr. RAYBURN. I did not. You need not repeat them.

Mr. CAIN. You will find that I have explained my position in the record, if you will kindly read it. I admit that there is some convenience.

Mr. RAYBURN. I have been trying to hear your testimony all the time, but whenever I have returned to the room somebody was testifying in whom I was not interested.

Mr. HUDDLESTON. Is there an interchangeable "scrip book" now being used by the carriers?

Mr. CAIN. I think there is. I am not sure. I am not informed. I have one that has been in use.

The CHAIRMAN. I think there was a book issued under the Railroad Administration, good on any road at 3 cents, a scrip coupon.

Mr. HUDDLESTON. Each coupon good for 3 cents in purchasing a ticket?

The CHAIRMAN. Yes, sir; each scrip coupon good for 3 cents.

Mr. HUDDLESTON. What discount is given?

The CHAIRMAN. None; a straight fare.

Mr. HUDDLESTON. Sold at 3 cents?

The CHAIRMAN. Yes, sir.

Mr. WEBSTER. It is slightly confusing to me to undertake to intermix the idea of a scrip book with a mileage book, as the two things are essentially different. If this is to be a scrip book along the line suggested by Mr. Jones and Mr. Burroughs, then the maximum of 5,000 miles and the minimum of 1,000 miles must, of necessity, come out, because it constitutes no basis at all. Which road are you going to accept as the basis in determining how much the face value of your scrip book up to 5,000 miles would be? It seems to me that just leads to confusion. I realize that your testimony was both legal and diplomatic, but, speaking of the bill itself and in the interest of good legislation, it will not do to involve a scrip book with the idea of mileage. When you come to the first page, where you say "at a just and reasonable rate per mile," that also, it seems to me, would have to be changed.

Mr. CAIN. You would say "at a just and reasonable rate," leaving out the per mile measure. Mr. Webster, if you will permit me to interrupt you, we did not feel so much concerned—at least, I did not—in the preparation of this amendment as to whether you should continue to use the mileage basis or what you should use. I was trying to assist the committee, whichever feature of it should impress you most, the idea being that the proviso would take care of these short-line railroads put in the third class. Just now I was trying to meet a suggestion which I described yesterday with regard to mileage. I have already said to the committee that I yield to the force of the suggestions here and have asked the privilege of the committee to make a change.

Mr. WEBSTER. I had not finished what I had in mind. If you eliminate as the basis for determining the rate "a just and reasonable rate per mile," on what basis is the commission going to calculate the rate of discount for the scrip book?

Mr. CAIN. I might answer that question by asking you on what basis are they going to get anywhere? You have a bill here that leaves the commission with sole discretion of determining whether it will make any—

Mr. WEBSTER (interposing). But we hedge that about with the limitation that it must be at a just and reasonable rate per mile, which would make it constitutional.

Mr. CAIN. That is an elastic expression, as we have found out by going before the commission just recently.

Mr. WEBSTER. I understand.

Mr. CAIN. Because they have to take into consideration the justness and reasonableness not only from the standpoint of the carrier but the public.

Mr. WEBSTER. But if you put it on the basis of selling the scrip at a discount, how will the commission proceed to ascertain the rate of discount?

Mr. CAIN. You have asked me a very difficult question. I have been wondering how they were going to do it anyhow under the bill as you propose it.

Mr. WEBSTER. It does not help us in any way to take us out of one impossible position and put us in another impossible position?

Mr. CAIN. I think this is much more possible than the one you have before you.

Mr. WEBSTER. The other at least had the merit of some standard or guide, a just and reasonable rate per mile, and this would leave the commission without any standard.

Mr. CAIN. This is on the wholesale basis. That is the argument, that there should be some reduction where a man comes in and buys a quantity of transportation.

Mr. HOCH. May I suggest, following your line of thought, this proposition: Changing it to scrip, take out the words "at a just and reasonable rate per mile," in lines 11 and 12, and simply provide that the commission be directed to issue interchangeable scrip books good for passenger carriage, etc., at a face value, let us say, of not less than \$40 nor more than \$200, at such discount, if any, as the commission may determine to be just and reasonable, transferring the words "just and reasonable" to the determination of the discount. I appreciate the difficulty just suggested in determining what would be a just and reasonable discount, if any should be given, on the wholesale theory.

Mr. WEBSTER. Take the situation you have just suggested and assume that it is embodied in the law and that you are a member of the Interstate Commerce Commission and are endeavoring to give expression to that law; on what basis of calculation would you determine the just and reasonable discount?

Mr. HOCH. I do not know that it would be any more difficult than it is under the present bill. In attempting to determine a discount on the mileage basis you would have the same problem in any event, because they have now an average basic rate over the country of 3.6 cents, and if you ask them to sell a 5,000-mile book on the basis of a certain discount from that basic mileage of 3.6 cents, you will have exactly the same difficulty you have under the proposition I suggest.

Mr. JONES. This bill as originally proposed to the Senate called for 2.5 cents a mile?

Mr. CAIN. That was just arbitrary. What we are doing here is simply giving authority for the commission to make a reduction.

Mr. WEBSTER. There is not any doubt in my mind about the power of Congress to fix rates as an abstract proposition. The suggestions made do not appeal to me. The Interstate Commerce Commission has now the power to fix rates. That is found in the law enacted by this Congress. If Congress has not the power to fix rates, I am unable to see how it can confer that power on somebody else.

Mr. CAIN. The Supreme Court of the United States, I think, is responsible for the origination of the words "just and reasonable rates." I think that is the limitation which the Supreme Court has fixed. The States and the United States have fixed rates, but they must be just and reasonable; that is the language of the court.

Mr. WEBSTER. The term "just and reasonable rate" has never had very much meaning in the concrete for me. I do not believe it has any very definite meaning to anybody, and to simply say that the Interstate Commerce Commission shall provide for issuing scrip books at a reasonable discount, without defining any basis at all or any standard by which that rate of discount is to be determined, pretty nearly exposes this bill to the suggestion of the action being purely arbitrary and not based upon anything at all.

Mr. CAIN. You have, of course, to put it on the quantity basis. That is the only way I see they could fix it, either on a mileage or any other basis.

Mr. GRAHAM. Mr. Cain, if this bill is amended, as you have when proceeding indicated, in your judgment would it be constitutional?

Mr. CAIN. It would.

Mr. GRAHAM. You have given that considerable thought?

Mr. CAIN. I have given it some investigation, I will not say exhaustive or thorough examination, but I went into an examination of the powers of government through commission sufficiently far to reach the conclusion that Congress has the power and can give the commission the power which it proposes to give it in this bill.

Mr. HAWES. Mr. Cain, a number of large concerns in my city are advocating the passage of this bill on the theory that it will be a convenience to the firms

in sending out their traveling men. I realize the difficulties which you have suggested, as other witnesses have, regarding the nontransfer of a scrip or mileage book. In case a man dies and a firm buys a number of these mileage books, would those be an absolute loss to the purchaser?

Mr. CAIN. I do not believe it would. I believe that the commission in its regulations and rules will provide for the redemption of the mileage books. It certainly will if the proponents, those who want the mileage book, present it when the question arises for making the orders.

Mr. HAWES. You think the language is broad enough to permit the commission to so regulate the transfer of these mileage books that it could be done among the traveling men of a large concern?

Mr. CAIN. I think so.

Mr. HAWES. You think that power is there?

Mr. CAIN. Yes, sir. I would not speak with positiveness about that, but that would be my judgment, Mr. Howes. It seems to me that would be within the power of regulation to the commission.

Mr. HAWES. That was my impression. I wanted your opinion.

Mr. ROBINSON. Mr. Chairman and gentlemen of the committee, our opposition to this bill is not arbitrary, nor are we obstinate about it, but we do know that the bill as passed by the Senate will work a very serious hardship upon the class of roads that we speak of. I am speaking generally for the short lines and the electric lines. If it is not amended and should become the law, we believe confidently that the commission will not have the discretion to make rules which will enable this class of roads to receive adequate compensation for the service they render.

We therefore most earnestly ask the committee that they give serious consideration to that subject and to so amend the bill as to give the commission the discretion as to what lines it should apply to. I can not conceive of that being unconstitutional. If the commission must under this act fix a uniform rate and fix it so that it is uniform or just and reasonable as to some of those lines, it is certainly unconstitutional as to them. If the committee amends it so as to permit the commission to exercise its discretion and to eliminate that class of roads to which the act would be unconstitutional if applied to them, then, it certainly will not make the act unconstitutional; and so we most earnestly ask that this bill be amended, at least to the extent of giving the commission the power to eliminate roads from the application of the act, when it finds that it is but fair and just that they should be so eliminated.

We believe that it would be wise to adopt this scrip-book plan and that the commission could then fix the rates on a wholesale plan. That is the real reason for the whole proposition here, to give the large user the benefit of some discount because of the wholesale principle.

Mr. JONES. What basis will the Interstate Commerce Commission have for the fixing of the discount?

Mr. ROBINSON. I think they can fix it arbitrarily. I think that in any form it is put into the bill, they will have to fix it on an arbitrary basis. When the come to decide as between the act as it is now drawn and the plan that we suggest, it will be less complicated if they adopt the arbitrary rate or the wholesale principle than it would be if they undertake to make a rate apply to all of these roads having so many different kinds of rates which are legal rates, rates which have been approved by the various commissions of the States, and which the lines must have if you put it solely on the wholesale principle and say we are going to give a discount; and you have at once eliminated this other question, because with this scrip a man can go up to the ticket office and get his ticket.

Mr. HOCH. Under the bill as drawn they would have to apply an arbitrary rate, and the only justification for a less rate than the current basic rate would be on the wholesale principle and not based on cost of operation in itself?

Mr. ROBINSON. I agree with you in principle.

Mr. Chairman, there are some other elements here that should be considered which we have not been able to consider. For instance, you take these tickets and make them salable over all the carriers in the United States, there are those dealing with the small roads—there are many very weak ones. They sell the tickets, and they put the money in their treasury. That ticket is good for a year or two years, and a road goes into bankruptcy, and they do not get the money: it will be a total loss to those people. I mention that as one of the complications. Our theory is if this special class is entitled to consideration that you can give that consideration by giving them a discount in the rate in such a way that it will not impose a great hardship on a part of the people; that it will only

impose that hardship, if it be one, just to the extent of that discount, and everybody else can be treated fairly.

Mr. JONES. What do you think of the idea of the purchaser paying one price for the book, say, \$100, under rules and regulations of the Interstate Commerce Commission, and on the use of it on any particular road the road shall give a discount from its current rate on the actual mileage traveled over that particular road?

Mr. ROBINSON. At what rate?

Mr. JONES. That would have to be arbitrary.

Mr. ROBINSON. I think you accomplish the same object in the way we have suggested. Then you have but one transaction of discount, whereas if you submit it to the agent here and the agent there you have many people.

I want to touch one other question—the question of convenience, which has been stressed here very much. Is there any reason why this special class shall have a discount, and then shall have some more, shall have a convenience at the expense of the people who have invested the money, built the property, and render the service? Why should those gentlemen who get this discount not be content with going to the window just the same as everybody else who pays a higher price for the service? Why give the man who gets a lower price some additional advantages because he says that he wants something in the way of convenience? We do not believe it is fair, and therefore we believe that the matter of convenience ought not to have any weight in the consideration of this bill.

I shall be glad to respond to any questions.

The CHAIRMAN. The committee will now stand adjourned until Tuesday, April 4, 1922, at 10 o'clock a. m.

(Thereupon, the committee adjourned to meet on Tuesday, April 4, 1922, at 10 o'clock a. m.)

**COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,**
Tuesday, April 4, 1922.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. We will proceed with the further consideration, and direct consideration, of the bill S. 848. Mr. McLaughlin of Nebraska has some statement to make. He has for a long time been promised an opportunity to appear here whenever the opening came, and the opening seems to be here now. Mr. McLaughlin, the committee will be glad to hear you.

STATEMENT OF HON. MELVIN O. MC LAUGHLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA.

Mr. MC LAUGHLIN. Mr. Chairman and gentlemen of the committee, before calling your attention to the direct matters that I have in mind, I might say, in a preliminary way, that I had the privilege of giving an address before the National Association of Commercial Travelers of New York some weeks ago at their annual meeting, in which this question of interchangeable mileage was pretty thoroughly discussed. I mingled with the commercial travelers and with a number of business concerns that were greatly interested in the extension of business throughout the country, and I found that they seemed to feel that the enactment of this legislation was a matter of very great importance to them. They are deeply concerned about it. While I have not had the opportunity of going into the subject in a technical or thorough manner like you gentlemen have, I do believe that the issuing of these mileage tickets would be a great stimulus to business throughout the country.

When Mr. Esch was here he called your attention to a Supreme Court decision, and I want to call your attention to another one that I think has a more direct bearing on the subject than the one he cited, namely, the decision in the case of the Interstate Commerce Commission *v.* The Baltimore & Ohio (145 U. S.), commencing on page 263. The proceeding was originally instituted by the filing of a petition before the Interstate Commerce Commission by the Pittsburgh, Cincinnati & St. Louis Railroad Co. against the Baltimore & Ohio Railroad Co. to compel the latter to withdraw from its lines all rates upon which business competitive with that of petitioner was transacted by so-called party

rates. I will read, with your permission, just a few paragraphs of this decision, which you will have an opportunity to examine at your convenience. On pages 266-267 of the decision in question, beginning with paragraph 7, you will find these words:

"That for many years prior to the passage of the said 'act to regulate commerce' all the railroad carriers in the United States had habitually made a rate of charge for passengers making frequent trips, trips for long distances, and trips in parties of 10 or more lower than the regular single fare traffic between the same points, and such lower rates were universally made at the date of the passage of said act. To carry on this universal practice many forms of tickets were employed to enable different classes of passengers to enjoy these lower rates and so stimulate the travel. To meet the needs of the commercial traveler the thousand-mile ticket was used; to meet the needs of the suburban resident or frequent traveler several forms of tickets were used, e. g., monthly or quarterly tickets, good for any number of trips within the specified time, and 10, 25, or 50 trip tickets, good for the specified number of trips by one person, or for one trip by the specified number of persons; to accommodate parties of 10 or more, a single ticket, one way or round trip, for the whole party, was made up by the agent on a skeleton form furnished for the purpose; to accommodate excursionists traveling in numbers too large to use a single ticket, special individual tickets were issued to each person. Tickets good for a specified number of trips were issued also between cities where travel was frequent. In short, it was an established principle of the business that whenever the amount of travel more than made up to the carrier for a reduction of the charge per capita, then such reduction was reasonable and just in the interests both of the carrier and of the public. Long experience has proved the soundness of the principle. Under its application grew up the business of commercial travelers, the enormous suburban business, the constant travel between large cities, and the excursion business. Under its application has grown up also the business of traveling companies or parties, which has reached an aggregate of many hundreds of thousands of dollars, and which depends for its existence upon a continuance of the transportation rates under which it has grown up."

I read from page 259 of the decision, as follows:

"That the twenty-second section, so far from making exceptions to an otherwise absolute rule, was inserted merely as additional precaution to insure the giving to the second and third sections of the act the construction which Congress intended. That the twenty-second section is a legislative declaration; that under the provisions of the second section of the act, circumstances and conditions of a commercial nature are to be considered, and among such circumstances and conditions, in the case of passenger traffic, the amount of service purchased or contracted for and the interest of the carrier in stimulating travel are to be considered."

I read from page 276 of the decision, as follows:

"The principal objects of the interstate commerce act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations, or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons traveling over the road. In other words, it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail. It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust or unreasonable."

I will now read from page 279 of the decision:

"The testimony indicates that for many years before the passage of the act it was customary for railroads to issue tickets at reduced rates to passengers making frequent trips, trips for long distances, and trips in parties of 10 or more, lower than the regular single fare charged between the same points, and such lower rates were universally made at the date of the passage of the act. As stated in the answer, to meet the needs of the commercial traveler the thousand-mile ticket was issued; to meet the needs of the suburban resident or frequent traveler several forms of tickets were issued. For example,

monthly or quarterly tickets, good for any number of trips within the specified time, and 10, 25, or 50 trip tickets good for a specified number of trips by one person or for one trip by a specified number of persons; to accommodate parties of 10 or more a single ticket, one way or round trip, for the whole party was made up by the agent on a skeleton form furnished for that purpose; to accommodate excursionists traveling in parties too large to use a single ticket special individual tickets were issued to each person. Tickets good for a specified number of trips were also issued between cities where travel was frequent. In short, it was an established principle of the business that whenever the amount of travel more than made up to the carrier for the reduction of the charge per capita, then such reduction was reasonable and just in the interests both of the carrier and of the public."

The CHAIRMAN. You may proceed with your statement, Mr. McLaughlin.

Mr. McLAUGHLIN. Mr. Chairman, I attended a few of the hearings and noted some of the questions that were raised in connection with the consideration of this legislation. First, with reference to the authority for issuing interchangeable mileage tickets, I want to call your attention to section 22 of the interstate commerce act on page 75, which, it seems to me, makes the authority perfectly clear. I will begin reading near the top of page 75, as follows:

"Provided further, That nothing in this act shall prevent the issuance of joint interchangeable 5,000-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of 1,000 or more miles. But before any common carrier subject to the provisions of the act shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this act; and all the provisions of said section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section 6."

With reference to the word "interstate" in the present bill, which has been considered at some length, and which a number of members of the committee seem to feel should be stricken out, the commercial travelers themselves are perfectly willing to have the word remain in, but from the information I have gained at the other end of the Capitol I am satisfied that an amendment striking out that word would not interfere with the passage of the bill during this session.

It would, perhaps, hold it up a couple of weeks, but not seriously. The commercial travelers believe, however, that if it is left as it is, with the word "interstate" in the bill, that it will not effect their purpose, because, as they believe, the railroads, when the interchangeable mileage books get into operation, will find the revenues so much increased because of the purchase of these books and the business so extended that of their own volition they will ask to have them honored intrastate. I do not think the word "interstate" seriously affects the matter one way or the other.

The CHAIRMAN. Mr. McLaughlin, you have handled his matter chiefly from the mileage-book point of view. Do you differentiate at all actually between a scrip-coupon book, where the coupons carry a fixed value, and the mileage book where a coupon carries only the privilege of traveling 1 mile?

Mr. McLAUGHLIN. Yes, sir; I differentiate, Mr. Chairman. I was coming to that.

The CHAIRMAN. Very well.

Mr. GRAHAM. Pardon me a moment, Mr. McLaughlin. You have called attention to section 22 of the interstate commerce act. That does not help us a great deal, does it? That is simply a permissive section and permits the railroads to use interchangeable mileage if they want to do it, if they have filed rates with the Interstate Commerce Commission and permission has been given, but there is not anything in that that helps us out in this situation.

Mr. McLAUGHLIN. I think there is.

Mr. GRAHAM. Because that is entirely on the volition of the carriers, while here we are saying to the Interstate Commerce Commission, "You must have

interchangeable mileage issued by the carriers." In other words, we are putting a mandate upon them to do a thing that in the act now is simply optional.

Mr. McLAUGHLIN. I think it is a rule that works both ways. Mr. Graham. The Interstate Commerce Commission is costing us around \$6,000,000 a year, and they have about 2,800 clerks down there putting in their time, and if they can not do a little something along this line we might dispense with them entirely and go back to the old system of competition and get along better than we are now.

Mr. GRAHAM. I do not see how that section of the existing law helps us a great deal. Will you please give me the citation to the One hundred and forty-fifth United States?

Mr. McLAUGHLIN. It is One hundred and forty-fifth United States, beginning on page 268.

Mr. GRAHAM. What is the title of the case?

Mr. McLAUGHLIN. The Interstate Commerce Commission v. The B. & O. Railroad Co.

With reference to scrip, if scrip is issued at the same rate that now obtains and there is nothing in this act asking for a reduction of the rate—I suppose that there will be, perhaps, a reduction of rates, because of the increased business—but if scrip is issued without a reduction of rates it would be of no advantage to the commercial traveler whatever, unless it were provided that the scrip be taken up on the trains in lieu of a ticket, because one of the great advantages to the commercial traveler is to have something in the way of transportation that will save him time. He is a busy man. If he has to go to the window every time with his scrip—

The CHAIRMAN (interposing). What is the difference in the use of the two tickets, mileage or scrip coupons? Whatever regulates the use of one could be applied to the regulation of the use of the other, whether taken on the trains or exchanged at ticket offices. Under the provisions of this bill that would have to be provided for by the Interstate Commerce Commission in either event—they would have the say—the mileage could be taken up on the train or exchanged at the ticket office and the same would be true of the scrip coupons.

Mr. McLAUGHLIN. Interchangeable mileage tickets have always been taken up on the trains.

Mr. JONES. Oh, no.

The CHAIRMAN. That is not correct.

Mr. McLAUGHLIN. That has been so with all I have ever used.

The CHAIRMAN. I want to help you along on this testimony. How do you think a mileage book could be used on the trains, of different roads or zones, when the rate per mile varies, as it does, from 3.6 cents to 10 cents a mile?

Mr. McLAUGHLIN. If you will permit me to say another sentence or two with reference to scrip, then I will take up that question and give you my judgment on it, based on my experience with the use of these mileage books. If scrip is issued at a reduced rate and it is not provided that it shall be taken up on the trains instead of at the ticket window in purchasing a ticket, it will mean that the scalpers of the country will do a wholesale business. They can go and buy the scrip and then go and buy the tickets and sell them out at a slightly reduced rate and do a wholesale business. That is something that must be guarded against. Then I want to say further that if this is changed to scrip I am satisfied from inquiry I have made and a number of commercial travelers who are vitally interested in this have made that there is absolutely no chance of getting this legislation through at this session.

The CHAIRMAN. But Mr. Clink, who was the secretary of the biggest of the travelers' associations, the United Travelers' Association, in the course of his testimony and at the end rather weakened on the mileage proposition, as I remember it, and virtually subscribed to the idea of the scrip ticket as being the more practical solution of the question, by virtue of the difference in the cost of a mile of travel in the different parts of the country.

Mr. McLAUGHLIN. With reference to the way in which the mileage book can be used, taking into account the different rates that are allowed on different roads, I recall that years ago, before the war, when I was always carrying mileage books similar to what is being asked for here, that when I came to a section of the road—for example, the Rocky Mountain country—and I presented my mileage, the conductor was authorized to either collect in cash the difference between that and the rate on the road or to detach enough more mileage to meet the higher rate. I think the very same thing could be done

now. I do not think the commission would understand that this means a uniform rate. In case, for example, of a 25 per cent reduction allowed on these tickets, we will say, on the basis of roads that are allowed to charge 3 cents a mile, then the same 25 per cent reduction would be made on roads that were permitted to charge 4 cents or 5 cents a mile, and it would be so stipulated in the tariff regulations that would be used in connection with the mileage books.

I made quite a careful examination at the office of the commission the other day of Interstate Commerce Commission No. F. 3194. It was the southeastern joint passenger tariff No. 6753, interchangeable mileage books. That was back before the war when the roads were issuing these books. I found in the tariff that they had a list of the issuing carriers, the roads that could sell the mileage, and then they had a list of participating carriers, those over whose roads the book would be honored, and then followed rules, rates, and regulations.

The CHAIRMAN. Those were all voluntary issues?

Mr. McLAUGHLIN. There were various exceptions noted. Yes, Mr. Chairman, but the Interstate Commerce Commission with the railroad companies after a careful hearing—and they will have more of a hearing, of course, on this subject if this bill becomes a law than either of the committees on the hill have had, because they will have to agree on the rate and the manner of issuing the mileage—it is clear to me that the very same kind of a tariff can be worked out which will provide all the exceptions, and this tariff that can be prepared will note that on certain roads so much more can be collected.

Mr. JONES. That would be true if this bill were not mandatory in fixing a uniform rate per mile?

Mr. McLAUGHLIN. It does not say that; it says: "A just and reasonable rate per mile."

Mr. JONES. Your conclusion would be sound if the bill were construed that way. Is there any objection to making it very positive that this bill does not provide for a uniform rate per mile?

Mr. McLAUGHLIN. No; if there is any doubt as to whether it does or does not provide for a uniform rate per mile, I think it would be perfectly proper to make that clear, that it does not mean a uniform rate; that it means a just and reasonable rate or rates over the various roads in question.

Mr. JONES. The proponents of the bill intended to have a uniform rate per mile when they started this legislation; that was their purpose, and the original bill provided for 2½ cents per mile, which was to be a uniform rate per mile. If they have gotten away from that purpose in the phraseology used in this bill, that is one thing, but I doubt very much whether that is in the minds of the proponents of the bill.

Mr. McLAUGHLIN. I understand that there is absolutely nothing of that kind contained in this bill, and my thought is that that is the reason the bill was so amended as to get clear away from the fixing of a rate.

Mr. LEA. I have been making the same contention about this uniform rate. However, I am inclined to believe that the sentence beginning on line 14 and running to the top of page 2 is inconsistent with any other theory than that a uniform rate was intended, and if it is not intended the minimum and maximum amounts should be expressed in dollars instead of miles.

Mr. GRAHAM. What is that sentence?

Mr. LEA. "Such tickets may be required to be issued for any distance not exceeding 5,000 miles nor less than 1,000 miles." That anticipates, unquestionably, I think, a uniform rate and it was inserted when the purpose was to have a specific rate per mile on a uniform basis. This would have to be stricken out and the maximum in dollars inserted.

Mr. GRAHAM. That would depend on the interpretation put on it by the Interstate Commerce Commission.

Mr. JONES. In my mind I can not be so positive as some of the witnesses seem to be as to the interpretation of this act, that it does not constitute a uniform rate per mile. Several of the witnesses seemed to be very positive that it did not. I can not reach that conclusion myself. I assume that there is an argument in it, but I think it is subject to some doubt as to whether this bill does not constitute a uniform rate per mile. If it does, then the differentials between larger passenger rates and standard passenger rates can not be taken care of.

Mr. LEA. What do you think, Mr. McLaughlin?

Mr. McLAUGHLIN. I still think that is a matter that can be specified in the tariff and regulations when it is worked out by the commission.

Mr. LEA. I do not know that you get my point, Mr. McLaughlin. My idea is this, that you can not specify a minimum of 1,000 miles when a part of the

country has a 3-cent rate and a part of the country has a 5 or 10 cent rate. No human being could sell a mileage ticket and say that it provided for a minimum number of miles, because that is not the standard; it is a question of dollars. Therefore, if we recognize that we are not going to have a uniform rate per mile, it is necessary to change that maximum number of miles as well as the minimum.

Mr. GRAHAM. Here is the suggestion I have in mind. Suppose we change this to a scrip proposition; and, of course, if we do, we will have to make a maximum and a minimum money limit—that is, not less than \$25 or more than \$50 worth of scrip in a book. I am wondering, if those books are issued at a reduced rate, say, at a 2.5-cent rate or basis, interchangeable for tickets at the ticket window, whether or not all the travel of the country will be upon those scrip books. If they are made the same as cash, and they cost one-half or three-fourths cent a mile less than ordinary tickets, pretty nearly everybody will use them and will interchange them among themselves—the scalpers will thrive throughout the country. How can you prevent that, even though you may say that the ticket is for a certain person, who has signed it? I believe if you make scrip books of that kind they will be used by almost everybody.

Mr. McLAUGHLIN. I think if scrip books are issued you will have the greatest scalping business ever perpetrated in the country.

The CHAIRMAN. There was never a time, as far as I know—and I was a "drummer" on the road for 25 years—when one could not go into a scalper's office and buy a mileage book.

Mr. JONES. Except in some States where it was prohibited. You could not do that in Pennsylvania.

Mr. GRAHAM. Would it not be worse if it were scrip?

The CHAIRMAN. I can not see how it would be any worse.

Mr. JONES. It seems to me, on that particular point of whether it would be worse or not, that would depend on whether you required the holder of the scrip to go to the ticket office and buy a ticket; if you required the scrip to be used on the trains you could not stop it.

Mr. MERRITT. A scalper would buy a thousand miles and convert it into any variety of tickets he wanted, and he would have a regular ticket office himself.

Mr. McLAUGHLIN. That is exactly what will be done if the scrip is issued at a reduced rate and can be exchanged for tickets. If the scrip is taken up on the trains, of course, that danger will be obviated. In addition to that objection, we should not forget the other objection—that if the scrip is to be exchanged at the window for a ticket, then the advantage to the commercial traveler in the way of time saving, which is one of very great importance, will be completely thwarted.

Mr. LEA. Apparently a serious objection made to that plan is that no conductor would be posted so that he could estimate the actual rate to the various destinations throughout the country. I think that is the fact. Suppose there were a provision that required the scrip book to be accepted to any point for which it was tendered on a particular road but not on other roads?

Mr. JONES. Or a division on the same road, perhaps?

Mr. LEA. Yes, sir; anyway a limitation of that kind. It seems, as the matter has been presented here, that it is impracticable to require a conductor to estimate and collect the rate to any place in the United States.

Mr. GRAHAM. He could not do it.

The CHAIRMAN. Is there anything further, Mr. McLaughlin?

Mr. McLAUGHLIN. I was just about to say in answer to the question raised by Mr. Lea about the use of mileage books where the rates are different, that when I was using mileage books, when they were in vogue, I recall distinctly that, for example, when I came to the Missouri River, where there was a fixed charge of 50 cents for crossing the bridge, when the rate was 2 cents a mile the conductor simply tore out 25 miles, and that when the rate was 4 cents instead of 2.5 cents or 3 cents on the mountain lines, he simply tore out some more mileage. That is the way they handled it, and that is my understanding of the way they would handle it now. If mileage books were issued, I think that could all be set forth in the tariff schedule, and then right on the back of the mileage book itself would be the direction that where the rate was more an additional charge was to be permitted.

Mr. GRAHAM. I asked that question early in this inquiry of some of these railroad men, whether it was not the practice originally to have printed right on the book that it did not apply to certain roads, and somebody, as I remem-

ber, denied the proposition, but I have a very distinct memory that that was the practice.

Mr. McLAUGHLIN. That was the practice; I know it was, because I had many of these mileage books myself, and I recall that directions and stipulations were printed either in the first part of the book or on the last page of the book, and a conductor having those directions and stipulations, in connection with the tariff which is issued, can very easily work it out. They have the same experience every day, and after a while they do not have to refer to the tariff at all.

I earnestly hope that whatever changes you may see fit to make in that, they will be made in such a way that the legislation will not be held up and that we can get this legislation on the statute books before the adjournment of this session of Congress.

Mr. JONES. Suppose you traveled from coast to coast with one of these mileage books over two or three roads where they have an increased rate over and above the rate fixed, on which you say the conductor might accept cash—

Mr. McLAUGHLIN (interrupting). I say the conductor might take up the cash. Mr. Jones, the regulations might be made that way, but I am inclined to believe that instead of taking up the cash the conductors will be instructed to take out more mileage, and that more mileage would be credited to that road in the settlement.

Mr. GRAHAM. He would only take the mileage for his division or run, anyhow?

Mr. McLAUGHLIN. That is all.

Mr. HOCH. Do you not think that would be a rather complicated computation?

Mr. McLAUGHLIN. I do not think so.

Mr. HOCH. What objection have you to offer to a scrip book issued in terms of dollars and cents instead of miles, and acceptable on trains the same as a mileage book; what objection have you to offer to it?

Mr. McLAUGHLIN. I have not any personal objection to offer to that except this, that if that change is made you will not get any legislation at this session, and I believe that some immediate legislation of this kind will be one of the greatest boons to business that we could possibly obtain. I am anxious to see it go through as quickly as possible for that reason.

The CHAIRMAN. Why do you say that we can not get any action if one of these propositions is included in the bill?

Mr. McLAUGHLIN. Maybe that had better not go in the record.

The CHAIRMAN. You have already made a statement that is in the record.

Mr. McLAUGHLIN. I say that for the reason that I have been advised through pretty competent authority that there is no chance of getting a scrip provision through the other body at the Capitol.

The CHAIRMAN. That is rather a general suggestion.

Mr. HOCH. You said something about previous regulations, and that among those regulations was a provision concerning the carriers that were to issue these tickets and those which did not issue them but honored them. Do you think a regulation of that sort would be possible under his bill?

Mr. McLAUGHLIN. Yes, sir.

Mr. HOCH. How do you think it is possible when this bill provides that they shall be "good for interstate passenger carriage upon the passenger trains of any and all carriers by rail subject to this act," and when this bill provides that all carriers shall issue these tickets? How can you modify the statute by regulation?

Mr. McLAUGHLIN. Whether or not a part of the roads are set forth as issuing carriers and others as honoring carriers, I do not think makes any material difference.

Mr. HOCH. This bill provides that each carrier shall issue them. You can not modify that by regulation.

Mr. McLAUGHLIN. Of course, as this bill is drawn it applies to interstate carriers.

Mr. HOCH. To the carriers subject to the interstate commerce act. You still think that a regulation could be made to provide for use only by certain carriers?

Mr. McLAUGHLIN. Well, regulations in general could be issued. It may be, referring to the particular thing to which you call attention, that only part of the roads would be asked to issue mileage books; but that could all be arranged by the commission.

The CHAIRMAN. Have you read the bill carefully?

Mr. McLAUGHLIN. I have read it several times.

The CHAIRMAN. Has it occurred to you that under this bill the Pennsylvania Railroad Co. might be directed and required to issue the tickets as prescribed and then refuse itself to honor the tickets which it sells?

Mr. McLAUGHLIN. You have reference to the interstate feature?

The CHAIRMAN. Yes; and that would apply to any other road likewise. If you will look at the language in lines 10, 11, 12, and 13 you will find these words:

"To issue at such offices as may be prescribed by the commission joint interchangeable mileage tickets at a just and reasonable rate per mile, good for interstate passenger carriage upon the passenger trains of any and all other carriers by rail subject to this act?"

That in itself would eliminate the road that sold the ticket, so as to deny the use of those tickets on the road that sells the ticket.

Mr. McLAUGHLIN. I doubt if such an interpretation could be placed upon it.

Mr. DENISON. That very question was raised in reference to the Hay-Paunce-fote treaty relative to the Panama Canal, which provided that ships of, I believe, all other nations should have certain privileges, and our Government contended that that did not include our own Government.

Mr. BARKLEY. Which one of our governments contended that?

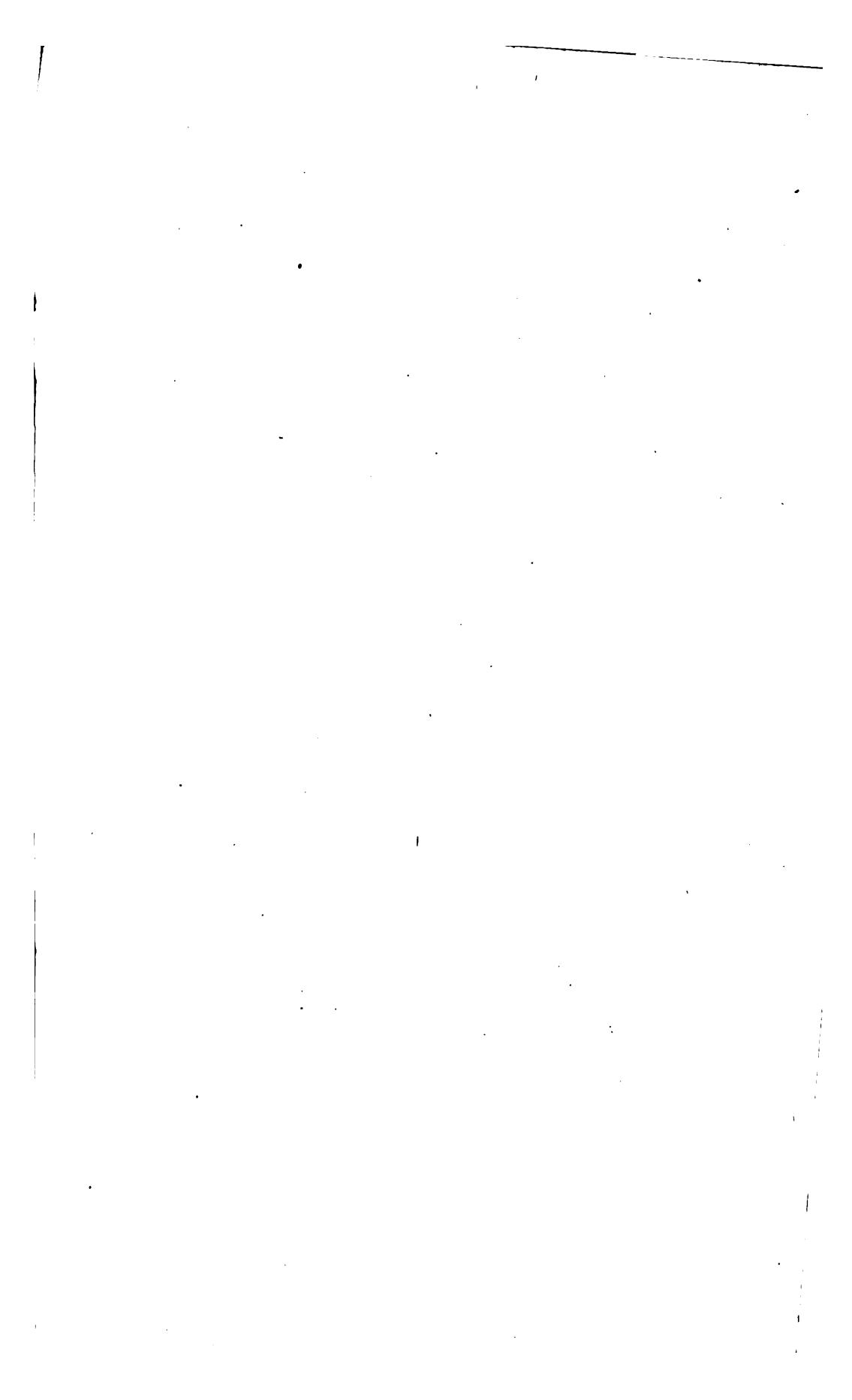
Mr. DENISON. Our Government here, of the United States.

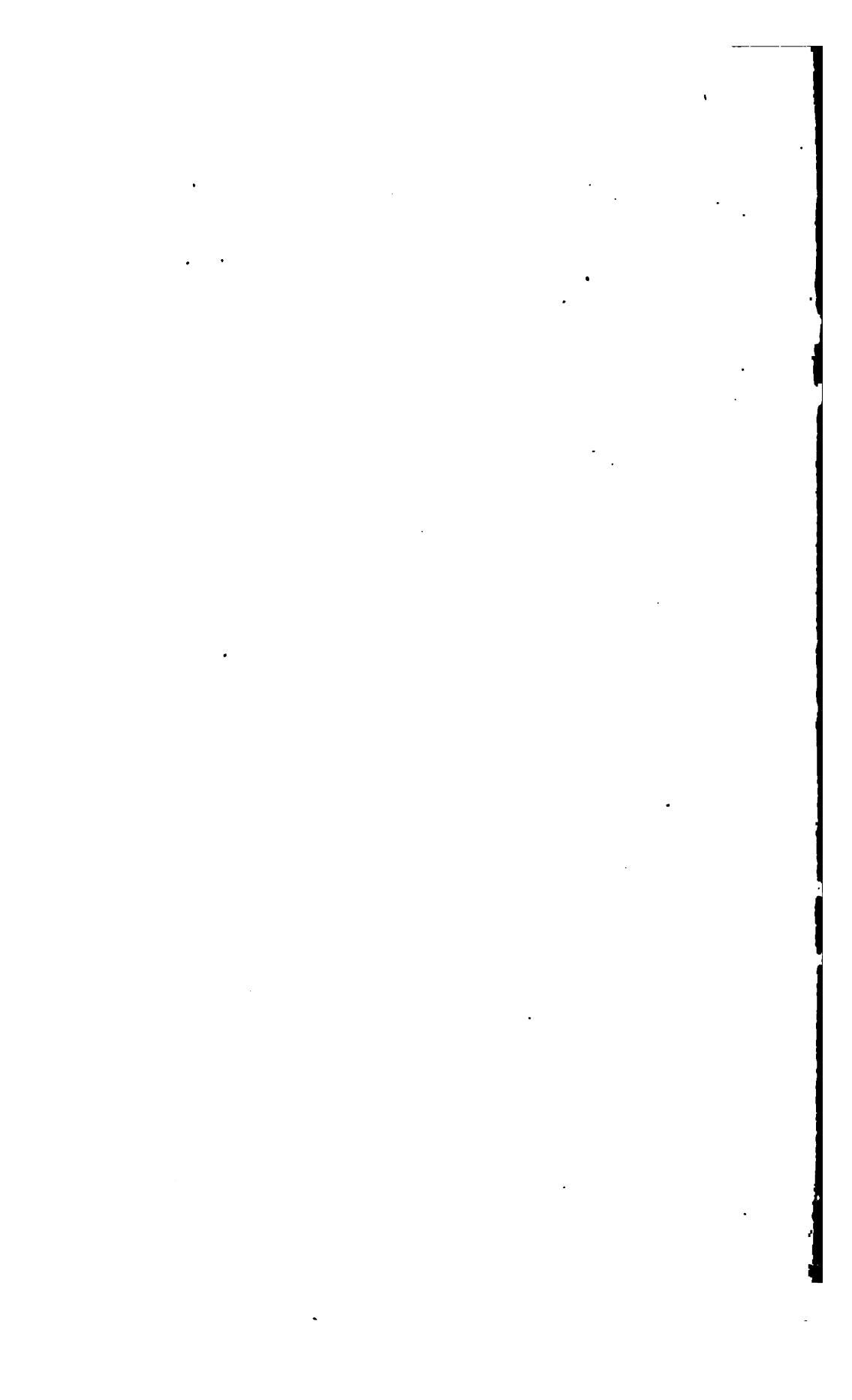
Mr. LEA. I was going to propose an amendment to strike out the word "other."

The CHAIRMAN. We will get to that before long.

Mr. McLaughlin, we are very much obliged to you for your statement.

(Thereupon the committee went into executive session, after which it adjourned.)





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